

No. 3641

United States
Circuit Court of Appeals

For the Ninth Circuit.

ALASKA HOMESTAKE MINING COMPANY, a
Corporation,

Appellant,

vs.

R. A. W. KRAMPITZ,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court
for the Territory of Alaska, Third Division.

FILED
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CLERK.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court for the Territory of Alaska,
Third Division.

No. 1060.

ALASKA HOMESTAKE MINING COMPANY,
Plaintiff,

vs.

R. A. W. KRAMPITZ,

Defendant.

Names and Addresses of Attorneys of Record.

E. E. RITCHIE, Esq., Attorney for Plaintiff,
Valdez, Alaska.

J. L. REED, Esq., Attorney for Defendant,
Valdez, Alaska.

In the District Court for the Territory of Alaska,
Third Division.

No. 1060.

ALASKA HOMESTAKE MINING COMPANY,
a Corporation,

Plaintiff,

vs.

R. A. W. KRAMPITZ,

Defendant.

Complaint.

Plaintiff alleges:

1.

That it is a corporation duly organized under the
laws of the State of Washington and owning prop-

erty in the territory of Alaska. It has filed its articles of incorporation, appointment and consent of agent, and annual financial statement in the office of the Secretary of the Territory and in the office of the clerk of the District Court, Third Division, at Valdez, and has paid its annual license fee for the year 1920 to the territory.

2.

Plaintiff is now and has been continuously for several years last past the owner and, subject to the rights of certain lessees hereinafter mentioned, entitled to the possession of two certain quartz mining claims situate adjacent to the north shore of Harri-man fjord, Prince William Sound, Valdez precinct, Territory of Alaska, known as Camp Bird No. 1 and Camp Bird No. 2. It is also the owner of all improvements, machinery, tools and other mining supplies and equipment on said claims, or which were on said claims on April 17, 1920, and was then and is now entitled to the immediate possession of all of the same. It is also the owner of 12½ per cent of the value of certain gold amalgam extracted from said premises by defendant and other persons in privity with him, as hereinafter more fully set forth.

3.

On or about May 1, 1918, at Seattle, Washington, plaintiff entered into a contract in writing with J. E. Whalen and William [1*] Quitsch whereby it leased to them said mining claims, together with all improvements, equipment and tools thereon, for a term of five years, ending October 25, 1922. At the

*Page-number appearing at foot of page of original certified Transcript of Record.

time said lease was made said lessees were in possession of all of said property and thereafter continued in possession for a short time, when they assigned the lease and all rights thereunder to a corporation known as the Free Gold Mining Company. Said corporation entered into possession of all said property and continued in possession of the same until about January 1, 1920, when it abandoned said property, and said lease became and was declared forfeited according to its terms, as hereinafter set forth. Said lease was filed for record in the office of the recorder of Valdez precinct May 31, 1918, and thereafter was duly recorded in Book 27, beginning at page 352. A copy thereof is annexed hereto, marked Exhibit "A," and made a part of this complaint.

4.

Said lease provided that 12½ per cent of the gross output of gold and other metals taken by the lessees from the ground should be paid to the lessor upon receipt of returns of such metals from the United States assay office at Seattle, Washington.

5.

Said lease further provided that after July 1, 1918, the lessees should keep at least six men steadily at work upon said mining claims, unless prevented by acts of God, labor strikes or other things over which they had no control, and that cessation of work upon the mine for a period of thirty days should work a forfeiture of the lease, and in such case the property should immediately revert to the lessors. It was further stipulated in said lease that the lessees should

at all times keep the premises free and clear of liens for labor or material furnished to the lessees.

6.

It was stipulated in said lease that all improvements, machinery, tools and other equipment placed on the property by the [2] lessees during the term of the lease should remain upon the premises and become the property of the lessors at the expiration of the lease either by running of the term or by forfeiture as stipulated in its provisions.

7.

In June, 1919, while said Free Gold Mining Company was in possession of said mine and equipment as assignees of said lessees named in said lease and engaged in developing and operating said mine, plaintiff caused to be posted in three conspicuous places on the ground a notice in writing as provided in Chapter 13 of the Session Laws of the Alaska legislature of 1915, stating that it was the owner of the mine and that the mine was being operated by lessees whose lease was of record in Book 27 at page 352, in the office of the recorder of Valdez precinct, and that said owner would not be responsible for the wages of labor employed by the lessees or their assignee, Free Gold Mining Company. A copy of said notice is annexed hereto, marked Exhibit "B," and made a part of this complaint.

8.

About January 1, 1920, or shortly prior thereto, said lessees and their assignee, Free Gold Mining Company, abandoned said property and have not since been in possession of any part of it, and after

the expiration of thirty days next following said abandonment said lease and all rights thereunder became forfeited because of the failure of the leaseholders for more than thirty days to keep at least six men at work upon the mine, or any men at all, and because of their failure to keep the premises free and clear of labor liens. Said failure to keep men at work was not due to any act of God, labor strike, or other unavoidable circumstance, but was wholly the fault of the lessees and their assignee. Through said forfeiture said mine and all improvements, machinery, tools and other equipment thereon, whether placed there by plaintiff or by the lessees or their assignee, reverted to the ownership and right of possession of plaintiff. [3]

9.

In January, 1920, the defendant and five other persons filed in the office of the recorder of Valdez precinct aforesaid claims of lien upon certain machinery, tools and other equipment on said premises, belonging to plaintiff, and upon certain gold amalgam taken from said mine, all more fully described hereinafter. All of said claims of lien were for wages of labor expressly stated to have been performed wholly subsequent to the posting of the notice by plaintiff of nonliability for labor employed by the lessees or their assignee as set forth in paragraph 7 of this complaint.

10.

Thereafter, defendant for himself and as assignee of the other five claimants filed suit in this court to foreclose said purported liens upon the property de-

scribed in them, and in his complaint made only the Free Gold Mining Company defendant, alleging employment by it alone of each of the lien claimants, while alleging further that said Free Gold Mining Company's interest in the mining property described was by virtue of the lease recorded in Book 27 at page 352 of the records of Valdez precinct. This plaintiff was not made a party to the suit, and was not mentioned in the complaint.

11.

Thereafter such proceedings were had in said action that judgment was rendered therein April 17, 1920, against said Free Gold Mining Company and in favor of the plaintiff, defendant herein, for \$1,900.10 and \$383.30 costs, and foreclosure of said liens, and directing sale of the property described by the United States marshal. Thereafter, acting under an order of sale issued out of the clerk's office of this court, the United States marshal of the Third Division of Alaska purported to sell, on May 1 and May 15, 1920, certain parts of said mine and certain articles of personal property belonging to it, fully described in said marshal's return of said sales, filed in said cause, which return is in words and figures as follows, to wit: [4]

United States of America,
Territory of Alaska,
Third Division,—ss.

MARSHAL'S RETURN.

I hereby certify and return that I received the annexed Order of Sale on the 19th day of April, 1920, and thereafter on the 19th day of April, 1920, I did

advertise according to law by posting Notices of Sale in three conspicuous places within five miles of the place of sale, one being at the door of the Postoffice, Valdez, Alaska; that I would on the 1st day of May, 1920, at 2 o'clock in the afternoon, at the front door of the Courthouse, Valdez, Alaska, offer for sale at public vendue to the highest and best bidder, for cash, the following described personal property of defendant, Free Gold Mining Company, a corporation:

66 oz. 6 pwt. of GOLD REPORT,

and thereafter on the 1st day of May, 1920, at 2 o'clock in the afternoon, at the front door of the Courthouse, Valdez, Alaska, I did offer for sale said personal property and sold same to R. A. W. Krampitz, Plaintiff herein, for the sum of (\$331.50) Three Hundred thirty-one and 50/100 that being the highest and best bid received.

And thereafter on May 15, 1920, by virtue of said Order of Sale issued on the said 19th day of April, 1920, I did advertise according to law by posting notices of Sale, in three conspicuous places, two within five miles of the place of sale, and one on the Postoffice at Granite, Alaska, that I would on the 1st day of June, 1920, at 2 o'clock in the afternoon, at defendant company's mining property, at mining claims known as Camp Bird No. 1, and Camp Bird No. 2, situated Harriman Fjord, an inlet of Prince William Sound in Valdez precinct, Territory of Alaska, offer for sale at public vendue to the highest and best bidder, for cash, the following described personal property of said defendant company:

One seven foot Lane Mill; one 25 h. p. Foos engine; steel rails, cars, pipes, forge, beltings, pulleys, tools, hose, one ten by ten Ingersoll Air Compressor; one Receiver; one 25 h. p. Fairbanks Morse gas engine and equipment; one seven by eight inch Dodge Crusher; three stopers; three jack hammers; one six h. p. Fairbanks hoist engine and cable; one two h. p. Fairbanks Morse engine; one Gibson Mill and equipment including concentrators and three amalgam plates:

And thereafter on the 1st day of June, 1920, at 2 o'clock in the afternoon, at the mill of the Free Gold Mining Company on Harriman Fjord, Alaska, I did offer for sale said personal property in separate parcels, but no bids being received, I did then offer it for sale as a whole and sold the same to R. A. W. Krampitz, plaintiff herein, for the sum of Five Hundred and no/100 (\$100.00), that being highest and best bid received.

The plaintiff herein has paid the Marshal's costs on this Writ amount to \$126.13.

Returned this 2nd day of June, 1920.

F. R. BRENNEMAN,

U. S. Marshal,

By John A. Roseen,

Deputy.

12.

Said defendant has converted to his own use all of said gold amalgam, including the 12½ per cent thereof belonging to plaintiff as royalty as hereinbefore set forth. He has removed from the mine [5]

and premises part of the personal property described in said marshal's return of sale, and threatens to remove the remainder and convert all of the same to his own use.

Wherefore plaintiff prays for a judgment of this Court decreeing said sales to be void as against the rights of plaintiff, and setting aside and vacating said judgment of R. A. W. Krampitz against the Free Gold Mining Company so far as the same adjudges any part of the property described in the marshal's return of sale except $87\frac{1}{2}$ per cent of the gold amalgam to be the property of the Free Gold Mining Company and subject to the liens described therein at the time the same were filed or at any other time. And plaintiff prays that the Court adjudge and decree that it is the owner and entitled to the immediate possession of $12\frac{1}{2}$ per cent of said gold amalgam and of all the other personal property and mining equipment described in said marshal's return of sale, and that defendant herein has no right, title or interest in or lien upon said personal property or mining equipment or the $12\frac{1}{2}$ per cent of said gold amalgam claimed by plaintiff, and that defendant be restrained from interfering with plaintiff's said possession and that he return to plaintiff all of said property he has removed or converted to his own use, or that plaintiff have judgment for its value, and that plaintiff have judgment for its costs herein.

LYONS & RITCHIE,

Attorneys for Plaintiff.

United States of America,
Territory of Alaska,—ss.

E. E. Ritchie, being duly sworn, says he is attorney for the plaintiff corporation; that said corporation has no officer in the Territory of Alaska, and affiant makes this verification for that reason; that he has read the foregoing complaint and he believes the same to be true.

E. E. RITCHIE.

Subscribed and sworn to before me this 19th day of October, 1920.

[Notarial Seal]

I. HAMBURGER.

Notary Public.

My Commission expires Oct. 31/1921.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Oct. 19, 1920. Arthur Lang, Clerk. By C. H. Wilcox, Deputy. [6]

Exhibit "A."

No. 18529.

THIS INDENTURE made this first day of May, 1918, by the ALASKA HOMESTAKE MINING COMPANY, a corporation organized under the laws of the State of Washington, party of the first part, and J. E. WHALEN and WILLIAM QUITSCH, of the Town of Valdez, Territory of Alaska, parties of the second part, WITNESSETH:

WHEREAS, the party of the first part on the 20th day of October, 1917, leased, demised and let unto the parties of the second part all of those cer-

tain mining claims situate near the north shore of Harriman Fjord, an inlet in Prince William Sound, in the Valdez Recording Precinct, Territory of Alaska, and further described as follows, to wit:

Those two certain lode mining claims known as and called CAMP BIRD NO. 1 and CAMP BIRD NO. 2, the notices of location of which are of record in Book 22 at pp. 266 and 267 of the records of the Recording Precinct of Valdez, Alaska, together with all improvements, machinery, tools, buildings and equipment upon or near said mining claims and used or to be used in connection with the working or development of the same, together with all and singular the tenements, hereditaments, appurtenances, rights and privileges thereunto belonging or in anywise appertaining, including a certain quantity of tools and equipment at that time in the Town of Valdez, Alaska, the property of the party of the first part, the same to be taken to said mining claims by the parties of the second part. The records of said recording office in the book and at the pages above named are hereby made a part of this agreement, for a further and more definite description of said mining claims, and:

WHEREAS, all of the parties hereto desire now to modify and change the terms and conditions of said lease, without impairing the original thereof, which was executed on the 20th day of October, 1917, as aforesaid, except as to such conditions, terms and agreements as are described and recited herein, NOW, THEREFORE,

IT IS AGREED by and between the parties hereto

that for and in consideration of the sum of One Dollar, paid by the parties of the second part to the party of the first part, the terms of said original lease is hereby extended for a period of five (5) years from and after the 25th day of October, 1917, unless sooner terminated thru a violation of any covenant or agreement contained in this lease, and said original lease, and to expire on the 25th day of October, 1922. A copy of said original lease is attached hereto and made a part of this agreement.

It is further agreed by and between the parties hereto that the parties of the second part shall pay to the party of the first part for the use and possession of said mining claims twelve and one-half per cent ($12\frac{1}{2}\%$) of the gross output of all gold or other metals taken or extracted from the ore or ore bodies of the said mining claims, for all of the time which this lease has to run; and all gold or other metals taken, extracted or returned from said ore shall be deposited by the parties of the second part in the First Bank of Valdez, at Valdez, Alaska, for said first party and said bank shall immediately forward the same to the United States Assay Office at Seattle, Washington, and upon receiving returns therefrom it is agreed that said bank may immediately credit $12\frac{1}{2}\%$ of such returns from said gold or other metals to the credit of the party of the first part, and $87\frac{1}{2}\%$ of such returns shall be credited to the parties of the second part.

It is further agreed that all improvements, machinery, tools and other equipment placed on said property by the parties of the second part during

any of the time which this lease has to run shall, at the expiration of the term of the same, be the property of the party of the first party and shall not be removed from said property by the parties of the second part, and in case said lease expires prior to the 25th day [7] of October, 1922, by virtue of a violation of any of the terms of the same by the parties of the second part, in such case all of said improvements, machinery, tools and other equipment placed on said property by the parties of the second part shall be the property of the party of the first part.

It is further agreed and the parties of the second part hereby agree to have a compressor on said mining claims on or before the 1st day of July, 1918, and that a mill capable of handling not less than ten tons of ore per day shall be placed on said mining claims on or before the 1st day of September, 1918.

It is further agreed by and between the parties hereto that the lease which was executed on the 20th day of October, 1917, by the parties of the second part and the party of the first part herein, together with this agreement, shall constitute and be one and the same instrument except as modified by this agreement.

It is further agreed that each and every condition, agreement and covenant contained herein shall bind the heirs, executors, administrators and assigns of each and all of the parties hereto.

IN WITNESS WHEREOF the said party of the first part has caused these presents to be executed by its president and attested by its secretary pursuant to a resolution of its Board of Directors and

its corporate seal to be hereto attached, and the parties of the second part have hereunto set their hands, the day and year in this agreement first above written.

ALASKA HOMESTAKE MINING COMPANY,

By EDWIN ECKERN,
Its President,
Party of the First Part.

[Corporate Seal] Attest: L. L. BAIR,
Secretary.

WM. QUITSCH,
J. E. WHALEN,
By J. E. WHALEN,
His Attorney in Fact,
Parties of the Second Part.

Executed in the presence of:

JOHN LYONS.

State of Washington,
County of King,—ss.

THIS IS TO CERTIFY that on this 1st day of May, 1918, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared J. E. Whalen, who is to me known to be one of the parties described in and whose name is subscribed to the foregoing agreement, and he acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned; and at the same time personally appeared before me J. E. Whalen, who is known to me to be the same person whose name is subscribed to the foregoing agreement

as attorney in fact of William Quitsch, and the said J. E. Whalen acknowledged to me that he subscribed the name of William Quitsch thereto as principal and his own name as attorney in fact, freely and voluntarily, for the uses and purposes therein mentioned; and at the same time personally appeared before me Edwin Eckern as the President of the Alaska Homestake Mining Company, the party of the first part to said agreement, and he acknowledged to me that he executed the same as the free and voluntary act and deed of said corporation, and declared to me that he was duly authorized to execute the same by virtue of a resolution of the Board of Directors of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my Notarial Seal the day and year first in this certificate written.

[Notarial Seal] THOMAS R. LYONS,
Notary Public in and for the State of Washington,
Residing at Seattle.

My Commission expires Sept. 22, 1918. [8]

LEASE.

THIS INDENTURE, made this 20th day of October, 1917, between ALASKA HOMESTAKE MINING CO., a corporation organized under the laws of the State of Washington, the party of the first part, and J. E. WHALEN and WM. QUITSCH, both residents of Valdez, Alaska, the parties of the second part, WITNESSETH:

That the said party of the first part, for and in consideration of the royalties hereinafter reserved, and the covenants and agreements hereinafter ex-

pressed, which are by the parties of the second part to be kept and performed, has granted, demised and let and by these presents does grant, demise and let unto the said parties of the second part, all of the following described mine and mining property situated near the north shore of Harriman Fjord, an inlet in Prince William Sound, in the Valdez Recording Precinct, Territory of Alaska, to wit:

Those two certain lode mining claims known as and called Camp Bird No. 1 and Camp Bird No. 2, the notices of location of which are of record in Book 22, at pages 266 and 267 of the records of the office of the United States Commissioner and Ex-Officio Recorder in and for the said Valdez Recording Precinct at Valdez, Alaska; together with all improvements, machinery, tools, buildings and equipment upon or near said mining claims and used or to be used in connection with the working or development of the same and together with all and singular the tenements, hereditaments, appurtenances, rights and privileges thereunto belonging or in anywise appertaining; and together with a certain quantity of tools and equipment now in the town of Valdez, Alaska, the property of the party of the first part, the same to be taken to said mining claims and mine by the parties of the second part.

To have and to hold the said premises and property and all thereof unto the said parties of the second part for the term of two years from and after the 25th day of October, 1917, unless sooner forfeited or terminated thru the violation of any covenant

thereinafter against the said parties of the second part reserved.

And in consideration of such demise it is covenanted and agreed by and between the said parties herein as follows, to wit:

FIRST, the parties of the second part agree immediately to enter upon and into the possession of said mining claims and premises and property and to work and mine the same at all times in a good and minerlike manner. The parties of the second part agree that between the 25th day of October, 1917, and the 1st day of July, 1918, they shall keep at least two men steadily at work upon said mining claims either themselves or other persons whom they may employ, unless prevented by acts of God or other things over which they have no control, and after the 1st day of July, 1918, until the date of the expiration of this lease the parties of the second part covenant and agree that they will keep at least six men steadily at work upon said mining claims including themselves, unless prevented by Acts of God, labor strikes or other things over which they have no control. It is mutually understood and agreed that cessation of work by the parties of the second part upon said mind for a period of thirty days shall work a forfeiture of this lease and the mining premises or mine described herein shall immediately revert to the party of the first part.

SECOND: It is agreed that the duly authorized officers or agents of the party of the first part shall have the privilege at all times of entering upon said mining claims and into all the workings thereon for

the purposes of inspection and in order to determine the manner and kind of work done and the amount of ore extracted from said mine.

THIRD: The parties of the second part further agree that they will keep a record of all ore taken or extracted from said mining claims and milled or otherwise reduced in any manner and they shall also keep a record of the proceeds obtained from such ore.

FOURTH: The parties of the second part further agree that they shall pay as royalties for the use and possession of said premises twenty-five percent (25%) of the gross amount of gold recovered from the ore extracted from said premises. All gold extracted from the ore taken from said premises shall be deposited by the parties of the second part in The First Bank of Valdez, at Valdez, Alaska, and said bank shall immediately forward the same to the United States Assay Office, and upon receiving [9] returns from each shipment the said bank shall immediately credit seventy-five percentum (75%) of such returns to the parties of the second part and twenty-five percentum (25%) thereof to the party of the first part.

FIFTH: The party of the first part is now indebted to the parties of the second part in the total sum of \$629.00, of which sum \$315.00 is due to the said J. E. Whalen and the sum of \$314.00 is due to the said Wm. Quitsch. It is mutually understood and agreed that the first royalty due to the party of the first part hereunder shall be applied upon the debt so due from the party of the first part to the parties of the second part, and shall be credited to the

account of the parties of the second part at the said bank until said debt is fully paid unless the same be paid in some other manner.

SIXTH: The parties of the second part further agree to keep the said mine, and all and every part and portion thereof, free and clear of and from all liens arising from labor performed for or material furnished to the parties of the second part in any manner connected with said mining claims.

SEVENTH: The parties of the second part agree that at the expiration of this lease, or sooner if forfeited or terminated, by reason of their failure to comply with the covenants hereof, that they will deliver said premises, and all and every portion thereof to the party of the first part in good order and condition.

EIGHTH: Each and every clause and covenant of this indenture shall inure to the benefit of, descend to and become binding upon the heirs, administrators successors and assigns of all parties hereto.

IN WITNESS WHEREOF the said party of the first part has caused these presents to be executed by its President and attested by its Secretary, pursuant to a valid resolution of its Board of Directors and its corporate seal to be hereto attached, and the parties of the second part have hereunto set their hands

and seals on the day and year hereinabove first written.

ALASKA HOMESTAKE MINING CO.,

By EDWIN ECKERN,

President.

[Seal]

Attest: S. A. PEPPER,

Secretary.

J. E. WHALEN,

WM. QUITSCH,

Parties of the Second Part.

Done in the presence of:

ANTHONY DIMOND.

F. J. HAYES.

United States of America,

Territory of Alaska,—ss.

THIS IS TO CERTIFY that on this 20th day of October, 1917, before me, the undersigned, a Notary Public in and for the Territory of Alaska, duly commissioned and sworn, personally appeared Wm. Quitsch and J. E. Whalen, to me personally known and to me known to be the identical individuals described and named as the parties of the second part in the foregoing instrument, and they duly acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned; also appeared Edwin Eckern, the President of the Alaska Homestake Mining Co., the party of the first part to said instrument, and he acknowledged to me that he executed the same as the act and deed of the said Alaska Homestake Mining Co., duly authorized thereunto by a valid resolution of its Board of Directors.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]

ANTHONY J. DIMOND,

Notary Public for Alaska.

My Commission expires Feb. 13, 1921.

EXPLANATION AND PART OF ANNEXED
LEASE.

The words "Said Premises" as used in the Seventh (7th) paragraph of the annexed lease is understood and agreed to cover any buildings improvements machinery or tools whether described in the description contained in said lease or placed thereon by the parties of the second part during the term of said lease. And this explanation is to be signed by all of the parties to said lease, and is to be considered and is hereby [10] agreed that the same is to form a part of said lease.

ALASKA HOMESTAKE MINING CO.,

By EDWIN ECKERN,

President. (Seal)

_____ ,

_____ ,

Parties of the Second Part.

S. A. PEPPER,

Witness.

_____,

Witness.

MINUTES OF THE MEETING OF THE BOARD
OF DIRECTORS OF THE ALASKA HOME-
STAKE MINING COMPANY.

At a special meeting of the Board of Directors of

the Alaska Homestake Mining Co., held at its offices in the City of Seattle, State of Washington, on the first day of May, 1918, the following proceedings were had, to wit:

There were present at said meeting the following named directors: Edwin Eckern, Edmund Smith, L. L. Bair and Samuel Pepper, constituting a majority of the Board of Directors of said Company.

Mr. Edwin Eckern acted as Chairman of said meeting and Mr. L. L. Bair acted as its Secretary.

The Chairman stated that said meeting was called for the purpose of considering a modification of terms of a certain lease which was granted by said Company to J. E. Whalen and William Quitsch on the 20th day of October, 1917, so that instead of paying 25% of the gross output of the mining claims described in said lease the parties of the second part therein should only pay 12½% of the gross output of said claims and that said lease should be modified so that the said parties of the second part therein should be required to place a compressor on said property on or before July 1st, 1918, and place a mill thereon on or before the 1st day of September, 1918, and that the time for which said lease was granted should be extended for a period of five years after the 20th day of October, 1917.

It was regularly moved and seconded that all of said modifications should be made as herein mentioned and upon vote being taken said resolution was unanimously adopted.

There being no further business, on motion said meeting adjourned.

Dated at Seattle, Washington, this 1st day of May, 1918.

EDWIN ECKERN,
President.

Attest: L. L. BAIR,
Secretary.

This is to certify that the foregoing is a true and correct copy of the minutes of the meeting of the Board of Directors of the Alaska Homestake Mining Company, held at its offices in the City of Seattle, Washington, on the 1st day of May, 1918.

L. L. BAIR,
Secretary.

WAIVER OF NOTICE AND CONSENT TO MEETING.

We, the undersigned, Directors of the Alaska Homestake Mining Company, a corporation organized and existing under the laws of the State of Washington, do hereby severally waive notice of the time, place and purpose of a special meeting of the Board of Directors of said company and consent that the same be held at Seattle, Washington of the 1st day of May, 1918, and we do further consent to the transaction of all business that may come before the meeting including the modification of that certain lease which was granted and executed on the 20th day of October, 1917, by the Alaska Homestake Mining Company to J. E. Whalen and William Quitsch, and we do hereby approve, ratify and confirm all of the terms contained in said lease as executed on the 20th day of October, 1917, and as modified on the 1st day of May, 1918.

Dated at Seattle, Washington, this 1st day of May, 1918.

EDWIN ECKERN,
S. A. PEPPER,
EDMUND SMITH,
Directors.

Filed for record in this office May 31, 1918, at 9 o'clock A. M.

GEO. J. LOVE,
U. S. Commissioner and Ex-officio Recorder. [11]
No. 18533.

ASSIGNMENT OF LEASE.

KNOW ALL MEN BY THESE PRESENTS, that J. E. Whalen and Wm. Quitsch, both of Valdez, Alaska, for a valuable consideration, the receipt whereof is hereby acknowledged, do hereby sell, assign, transfer and set over unto FREE GOLD MINING COMPANY, a corporation organized and existing under the laws of the Territory of Alaska, its successors and assigns, all right, title, interest, claim and demand and right of possession to the property hereinafter described and in and to that certain lease dated the 20th day of October, 1917, between the Alaska Homestake Mining Company, a corporation, organized under the laws of the State of Washington, as party of the first part, and J. E. Whalen and Wm. Quitsch, parties of the second part, which leased certain mining property situated near the north shore of Harriman Fjord, an inlet of Prince William Sound in the Valdez Recording Precinct, Territory of Alaska, described as follows:

“Those two certain lode mining claims known as and called CAMP BIRD NO. 1 and CAMP BIRD NO. 2, the notices of location of which are of record in Book 22 at pages 266 and 267 of the records in the office of the United States Commissioner and Ex-officio Recorder in and for the said Valdez Recording Precinct, at Valdez, Alaska, together with all improvements, machinery, tools, buildings and equipment upon or near said mining claims and used or to be used in connection with the working or development of the same, and together with all and singular the tenements, hereditaments, appurtenances, rights and privileges thereunto belonging or in anywise appertaining; and together with a certain quantity of tools and equipment now in the Town of Valdez, Alaska, the property of the party of the first part, the same to be taken to said mining claims and mine by the parties of the second part.” Said lease being now of record in the records of the Valdez Recording Precinct in Book 27 of Records at Page 257 thereof; also that certain lease dated the 1st day of May, 1918, between Alaska Homestake Mining Company, a corporation, organized under the laws of the State of Washington and J. E. Whalen and Wm. Quitsch covering the same property heretofore described, which last named lease is a modification in some of the terms of the former lease herein described, the last named lease appearing of record in the records of the Valdez Recording Precinct, at Valdez, Alaska, in Book 27 of Records at Page 352 and reference is hereby made to this book and page herein named of the records of the Valdez Recording Precinct for a

more particular description and for the terms and conditions of each of said leases.

This assignment is intended to convey to FREE GOLD MINING COMPANY every and all rights and privileges now held by the said J. E. Whalen and Wm. Quitsch in and to said leases and the right of possession to the property herein described is intended to be transferred by this assignment subject however to all the terms and conditions contained in said two leases.

IN WITNESS WHEREOF, we have hereunto set out hands and seals this 3rd day of June, 1918.

J. E. WHALEN,

WM. QUITSCH,

By J. E. WHALEN,

His Attorney in Fact.

Done in the presence of:

ANTHONY J. DIMOND,

F. J. HAYES.

United States of America,

Territory of Alaska,

Third Division,—ss.

THIS IS TO CERTIFY that on this 3d day of June, 1918, before me, the undersigned, a Notary Public in and for the Territory of Alaska, personally appeared J. E. Whalen to me known to be one of the parties described in and whose name is subscribed to the foregoing instrument and he acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned and at the same time personally appeared before me J. E. Whalen who was known to me to be the same person

whose name is subscribed to the foregoing instrument as attorney in fact for Wm. Quitsch and the said J. E. Whalen acknowledged to me that he subscribed the name of Wm. Quitsch thereto as principal and his own name as attorney in fact, freely and voluntarily for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 3d day of June, 1918.

[Notarial Seal] ANTHONY J. DIMOND,
Notary Public for Alaska.

My Commission expires Feb. 13, 1921. [12]

Filed for record in this office June 3, 1918, at 10:45 o'clock A. M.

GEO. J. LOVE,
U. S. Commissioner and Ex-officio Recorder.

Exhibit "B."

NOTICE OF NONLIABILITY FOR LABOR.

Notice is hereby given that the Alaska Homestake Mining Company is the owner of the mining claims known as the Camp Bird No. 1 and Camp Bird No. 2, near Harriman Fjord, Valdez Precinct, Territory of Alaska; that said claims were leased to J. E. Whalen and William Quitsch by lease which appears of record in the office of the commissioner and recorder of said Valdez precinct in Book 27 at pages 257-8-9-260, and supplemental lease to said lessees which appears of record in said recorder's office at pages 355-6-7-8-9-360 of Book 27; that said lease was assigned by said lessees to the Free Gold Mining Company, a corporation, by assignment which appears of record in said recorder's office in Book 27 at pages 364-5-6.

Notice is further given that all work being done on said mining claims or to aid in their development or operation is done under and by virtue of said lease by the lessees or their assigns, and said Alaska Homestake Mining Company will not be responsible for any wages of employes engaged in any kind of work upon said claims or in aid of mining operations thereon.

Dated and posted June —, 1919.

ALASKA HOMESTAKE MINING CO.

By E. E. RITCHIE. [13]

In the District Court for the Territory of Alaska,
Third Division.

No. 1060.

ALASKA HOMESTAKE MINING COMPANY,
a Corporation,

Plaintiff,

vs.

R. A. W. KRAMPITZ,

Defendant.

Demurrer.

Comes now the defendant R. A. W. Krampitz and demurs to plaintiff's complaint on file herein for the following reason, to wit:

That it appears upon the face thereof that said complaint does not state facts sufficient to constitute a cause of action.

WHEREFORE, defendant prays that said com-

plaint be dismissed and for his costs herein incurred.

J. L. REED,
Attorney for Defendant.

Service accepted this 15th day of November, 1920.

E. E. RITCHIE,
Attorney for Plaintiff.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Nov. 16, 1920. Arthur Lang, Clerk. By C. H. Wilcox, Deputy.
[14]

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Valdez.

Page 50.

October 20th, 1920, Term of Court, Valdez, Alaska
—November 22d, 1920—24th Court Day—Monday.

No. 1060.

ALASKA HOMESTAKE MINING COMPANY,
vs.

R. A. W. KRAMPITZ.

Minute Order Overruling Demurrer.

Now on this day the plaintiff being represented by its attorney, E. E. Ritchie, and the defendant being present by his attorney, J. L. Reed, Esq., this matter having on a prior day been heard upon the demurrer of the defendant to plaintiff's complaint—

IT IS ORDERED that the demurrer of the defendant to plaintiff's complaint herein be and the same is hereby overruled and the defendant given ten days from this date in which to answer. [15]

In the District Court for the Territory of Alaska,
Third Division.

No. 1060.

ALASKA HOMESTAKE MINING COMPANY,
a Corporation,

Plaintiff,

vs.

R. A. W. KRAMPITZ,

Defendant.

Answer.

Comes now the defendant R. A. W. Krampitz and for answer to plaintiff's complaint on file herein admits, denies and alleges:

I.

Referring to paragraph two thereof, defendant denies that plaintiff is the owner of all or any part of the machinery, tools, and other mining supplies and equipment on said claims or which was on said claims on April 17th, 1920, or that plaintiff was then or is now entitled to the immediate possession of all or any part of the same; defendant denies that plaintiff is the owner of 12½ per cent of the value of certain gold amalgam extracted from said

premises by defendant or other persons in privity with him.

II.

Referring to paragraph three thereof, defendant denies each and every allegation therein contained.

III.

Referring to paragraph eight thereof, defendant denies each and every allegation therein contained.

IV.

Referring to paragraph nine thereof, defendant denies that in January, 1920, the defendant and five other persons filed in the office of the recorder of Valdez precinct aforesaid, claims of liens upon certain machinery, tools and other equipment on said premises, belonging to plaintiff or upon any gold amalgam belonging to plaintiff.

V.

Referring to paragraph ten thereof, defendant denies that said suit filed for himself and as assignee of five other claimants to foreclose said liens upon the property described in them, that in [16] his complaint he alleges employment by the Free Gold Mining Company alone of each of the lien claimants.

VI.

Referring to paragraph eleven thereof, defendant denies that after April 17th, 1920, acting under an order of sale issued out of the clerk's office of this court, the United States marshal of the Third division of Alaska, purported to sell on May 1st and May 15th, 1920, certain parts of said mine and

certain articles of personal property belonging to plaintiff.

VII.

Referring to paragraph twelve thereof, defendant admits that he has appropriated all of said gold amalgam to his own use but denies that he has converted the same or any part thereof to his own use; defendant denies the 12½ per cent thereof belongs to plaintiff as royalty. Defendant admits that he has removed from the mine and premises part of the personal property described in said marshal's return of sale and admits that he expects to remove the remainder of *of* said personal property and to appropriate all of the same to his own use and to the use of other lien claimants in privity with him, but denies that he threatens to remove the remainder of said personal property or to convert all or any part of said personal property to his own use.

AFFIRMATIVE DEFENSES.

I.

For his first affirmative defense defendant alleges:

That on, prior to and subsequent to the 19th day of March, 1920, said 19th day of March, 1920, being the time plaintiff filed and commenced an action for himself and certain other lien claimants to foreclose their liens against the personal property described in the marshal's return of sale, plaintiff was a foreign corporation owning, leasing property and doing business within the Territory of [17] Alaska, ~~1913~~; that at said times and prior to the 4th day of

June, 1920, said plaintiff had wholly failed to comply with the provisions of Chapter 23 of the Compiled Laws of the Territory of Alaska, 1913, in the following particulars, that said plaintiff failed and neglected to file in the office of the Secretary of Alaska, and in the office of the clerk of the District Court for the 3rd Division a duly authenticated copy of their charter or articles of incorporation and also a statement verified by the oath of the president and secretary of said corporation and attested by the majority of the board of directors in accordance with the requirements of Section 654, and wholly failed and neglected during said times mentioned to file in said offices a certificate under the seal of the corporation, and *and* the signature of its president, vice-president, or other acting head and its secretary certifying that the corporation has consented to be sued in the courts of the district upon all causes of action arising against it in the district, and that service of process may be made upon some person, a resident of the district, with the name and place of residence designated in such certificate and that such service when so made upon such agent, shall be valid service on the plaintiff corporation; and did wholly fail and neglect to appoint an agent residing at the principal place of business of said plaintiff or at all; that said plaintiff has wholly failed and neglected at said times to file in like manner the written consent of any person to act as such agent for plaintiff.

II.

For his second affirmative defense defendant alleges:

1.

That the so-called notice of nonliability for labor alleged to have been posted and given by plaintiff in June, 1919, paragraph 7, sets forth the ownership by plaintiff of the mining claims known as [18] Camp Bird No. 1 and Camp Bird No. 2 near Harriman Fjord, Valdez precinct, Territory of Alaska, but that plaintiff failed and neglected at all times to post or give defendant notice of nonliability for defendant's labor and lien claims performed by defendant or defendant's assignors by virtue of any ownership, interest or claim by plaintiff in any part or portion of the personal property sold to defendant and described in marshal's return of sale set forth in paragraph eleven of plaintiff's complaint, according to law.

2.

That no part or portion of the property sold to plaintiff described in marshal's return of sale, was or is at the times mentioned real property or was or is at the times mentioned placed on the surface of the ground and affixed thereto, so as to become fixtures and included in the term "mine" as defined in Chapter 13 of the Session Laws of Alaska, 1915, or so as to become a part of the mining claims known as Camp Bird No. 1 and Camp Bird No. 2, the title or ownership thereof plaintiff seeks exemption from liability for labor performed thereon by

virtue of the alleged notice of nonliability set forth in paragraph seven of plaintiff's complaint.

3.

That all of the property sold and transferred to defendant by marshal's bills of sale and described in Marshal's return of sale, during all of the times mentioned when said lease or leases were made and entered into belonged to and the ownership thereof and thereto was in the Free Gold Mining Company, a corporation, save and except one two h. p. Fairbanks Morse engine; and one Gibson Mill and equipment; and upon none of said property was notice posted or claim of ownership given according to law by Alaska Homestake Mining Company.

4.

That said cause referred to in paragraph ten of plaintiff's [19] complaint was filed and commenced on the 19th day of March, 1920, by defendant and his assignors, five other lien claimants to foreclose their liens, for work and labor performed by them long prior to any so-called abandonment or forfeiture under said leases by Free Gold Mining Company. In Cause No. 1029, entitled *R. A. W. Krampitz vs. Free Gold Mining Company*, a corporation, in which all the property against which a lien is claimed is treated and described as personal property, and that the decree and judgment rendered and entered in said cause on the 17th day of April, 1920, in favor of the plaintiff in said cause and against the defendant, and the same being binding and conclusive against said defendant and others in privity with it required in part among

other things, "that immediately upon such sale taking place the marshal shall executed and issue to the purchaser or purchasers the proper bill of sale or bills of sale for said property, and thereupon said purchaser or purchasers shall be entitled to the sole and immediate and exclusive possession thereof." That in accordance with said decree and judgment all of said personal property was sold to this defendant and said marshal made, executed and delivered thereafter on the — day of May and June, 1920, bills of sale therefor to defendant transferring title and possession and right of possession to said property to defendant R. A. W. Krampitz. That said judgment and decree provided in part among other things, "That the said defendant and all persons claiming or to claim under it, and all person having liens subsequent to plaintiff's liens upon said mills, machines and machinery and said dump or mass of mineral bearing earth, ore, rock, and gold hereinafter described, and their and each of their heirs, assigns and personal representatives, and all persons claiming to have acquired any interest in said mine and property subsequent to the time plaintiff and his said assignors commenced to labor and render services whereby plaintiff's liens were acquired, be forever barred and foreclosed of and from all equity and claim of, in and to said property and every part and parcel thereof after the delivery of said marshal's bill of sale."

WHEREFORE defendant prays that said action

be dismissed with his costs and disbursements herein.

J. L. REED,
Attorney for Defendant. [20]

United States of America,
Territory of Alaska,—ss.

R. A. W. Krampitz, being duly sworn, deposes and says: That I am the defendant in the above-entitled cause, and have read the foregoing answer and know the contents thereof and that the same are true as I verily believe.

R. A. W. KRAMPITZ,
Defendant.

Subscribed and sworn to before me this 27th day of November, 1920.

[Notarial Seal] J. L. REED,
Notary Public for Alaska.

My Commission expires April 28, 1922.

Service of a copy of the above answer is hereby accepted, this 27th day of November, 1920.

E. E. RITCHIE,
Attorney for Plaintiff.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Nov. 27, 1920. Arthur Lang, Clerk. By C. H. Wilcox, Deputy.
[21]

In the District Court for the Territory of Alaska,
Third Division.

No. 1060.

ALASKA HOMESTAKE MINING COMPANY,
a Corporation,

Plaintiff,

vs.

R. A. W. KRAMPITZ,

Defendant.

Motion to Strike from Answer.

Now comes the plaintiff and moves the Court for an order striking from defendant's answer the first and second affirmative defenses thereof, upon the ground that the same are irrelevant and do not constitute a defense to plaintiff's cause of action.

Plaintiff further moves the Court that in case the Court should hold that the first paragraph of the first affirmative defense states alleged matters of fact that might constitute a defense and denies the motion to strike said paragraph, then and in such event that the Court order said paragraph to be made more definite and certain by setting forth in detail the acts alleged therein as "leasing property and doing business with the territory of Alaska."

E. E. RITCHIE,

Attorney for Plaintiff.

Service of the foregoing motion by delivery of copy admitted this 17th day of December, 1920.

J. L. REED,

Attorney for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Dec. 18, 1920. Arthur Lang, Clerk. By Aaron E. Rucker, Deputy. [22]

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District Court, Territory of Alaska, Third Div.,
Valdez.

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October 20th, 1920, Term of Court, Valdez, Alaska
—December 23d, 1920—29th Court Day.

No. 1060.

ALASKA HOMESTAKE MINING COMPANY,
Plaintiff,

vs.

R. A. W. KRAMPITZ,

Defendant.

Hearing on Motion to Strike.

Now on this day this matter came on to be heard upon the motion of plaintiff to strike portion of defendant's answer, the plaintiff being represented by its attorney, E. E. Ritchie, and the defendant being represented by his attorney, J. L. Reed.

WHEREUPON after argument had by respective counsel and the Court being fully advised in the premises,—

IT IS ORDERED that plaintiff's motion to strike certain portions of defendant's answer be, and the same is hereby denied.

To which ruling of the Court the plaintiff excepts and the exception is allowed. [23]

In the District Court for the Territory of Alaska,
Third Division.

No. 1060.

ALASKA HOMESTAKE MINING COMPANY,
a Corporation,

Plaintiff,

vs.

R. A. W. KRAMPITZ,

Defendant.

Reply.

Replying to the first affirmative defense set forth in defendant's answer plaintiff denies that at any time mentioned in its complaint it was engaged in doing a general business in the territory of Alaska.

II.

Replying to the first and second paragraphs of the second affirmative defense of said answer plaintiff alleges that the notices of nonliability referred to were posted as follows: One at the entrance of the bunkhouse, one at the entrance of the blacksmithshop, and one at the entrance of the mill which contained all the heavy machinery, all of which was attached to the land.

III.

Plaintiff denies each and every allegation of

paragraph 3 of the said second affirmative defense.

LYONS & RITCHIE,

Attorneys for Plaintiff.

Receipt of copy of the foregoing reply is admitted this 28th day of December, 1920.

J. L. REED,

Attorney for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Dec. 28, 1920. Arthur Lang, Clerk. By Aaron E. Rucker, Deputy. [24]

In the District Court for the Territory of Alaska,
Third Division.

No. 1060.

ALASKA HOMESTAKE MINING COMPANY,
a Corporation,

Plaintiff,

vs.

R. A. W. KRAMPITZ,

Defendant.

Order Setting Aside Judgment in Cause No. 1029.

The plaintiff and defendant, by their respective counsel, agree, in open court, that the above-entitled cause may be heard and testimony adduced by both sides upon the merits of the case, and the Court orders that the judgment heretofore rendered in Cause No. 1029 of this court, entitled, R. A. W. Krampitz vs. Free Gold Mining Company, a corporation, be and the same is hereby opened up and

set aside for the purpose of this cause and to fully determine the right of claim of the plaintiff, the Alaska Homestake Mining Co., to be adjudged the owner of any of the property in controversy in said cause No. 1029.

Dated this 11th day of January, 1921, as of date, January 4, 1921.

FRED M. BROWN,
Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Jan. 11, 1921. Arthur Lang, Clerk. By Aaron E. Rucker, Deputy. Entered Court Journal No. 13, page No. 87. [25]

Filed in the District Court, Territory of Alaska, Third Division. Jan. 15, 1921. Arthur Lang, Clerk. By Aaron E. Rucker, Deputy.

In the District Court for the Territory of Alaska,
Third Division.

No. 1060.

ALASKA HOMESTAKE MINING COMPANY,
a Corporation,

Plaintiff,

vs.

R. A. W. KRAMPITZ,

Defendant.

Record on Appeal.

BE IT REMEMBERED, that the above-entitled cause came on duly and regularly to be heard, at

Valdez, Alaska, on Tuesday, January 4, 1921, before the Honorable FRED M. BROWN, Judge of said Court:

The plaintiff corporation being represented by its attorney and counsel, E. E. Ritchie, Esq.

The defendant being represented by his attorney and counsel, J. L. Reed, Esq.

Opening statements were made to the Court by the attorneys for the respective parties.

WHEREUPON the following additional proceedings were had and done, to wit: [26]

In the District Court for the Territory of Alaska,
Third Division.

No. 1060.

ALASKA HOMESTAKE MINING COMPANY,
a Corporation,

Plaintiff,

vs.

R. A. W. KRAMPITZ,

Defendant.

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[27]

Mr. Reed moved for a judgment on the pleadings, which motion was, after argument by counsel, denied and defendant allowed an exception to the ruling.

Mr. RITCHIE.—Plaintiff offers in evidence the files in Cause Number 1029 of this court, being the lien foreclosure suit referred to in plaintiff's complaint. I will offer the entire record, although there is only a part of it that would be essential.

The files in said cause No. 1029 are admitted in evidence, without objection, marked Plaintiff's Exhibit "A," attached hereto and made a part hereof.

Mr. RITCHIE.—I will call Mr. Dimond.

Testimony of Anthony J. Dimond, for Plaintiff.

ANTHONY J. DIMOND, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. RITCHIE.)

Q. State your name. A. Anthony J. Dimond.

Q. You are a practicing attorney in the town of Valdez, Alaska, and have been for several years?

A. Yes, sir.

Q. Were you one of the officers of the Free Gold Mining Company which was doing business here some years ago?

A. Yes; I was secretary of the company, for some considerable length of time.

Q. Did that company at one time have a lease or rather an assignment of a lease from J. E. Whalen and William Quitsch which they had taken from the Alaska Homestake Mining Company, [28—2] the plaintiff in this case? A. Yes, sir.

Q. Was that in your custody as the secretary of the company?

A. It was in my custody at one time, but I have made a thorough search for it and have been unable to find it—I presume I gave it to Mr. Whalen or someone else who wanted to see it. I find in my custody all the other papers, the original lease and the assignment of the lease, but I can't find the lease which was executed in Seattle.

Q. Have you any idea where it is?

A. I haven't the slightest idea,—I don't know where it is; I wouldn't know where to look for it.

(Testimony of Anthony J. Dimond.)

Q. You have no memorandum showing that any particular person took it from your office?

A. No.

Q. Where is Mr. Whalen now?

A. The last I heard of him he was in Texas.

Q. Was the lease recorded? A. Yes, sir.

Mr. RITCHIE.—I am going to have Mr. Dimond identify a copy.

Mr. REED.—As I understand Mr. Dimond's testimony, the assignment of the lease is lost?

Mr. RITCHIE.—No, it is the lease that is lost.

Mr. REED.—They are both of record?

Mr. RITCHIE.—Yes.

Mr. REED.—I have no objection to the secondary evidence, if the Court will admit it, but I do object to the competency and relevancy of the testimony, not to the identity of the instrument.

Q. Please examine that—I believe you have already done so. (Handing witness paper.) [29—3]

A. Yes, sir.

Q. State whether or not that is a true copy, or substantially a true copy.

A. Yes, I have no doubt that is a true copy of the original lease dated May 1, 1918. I saw the original and had it in my possession for a long time.

Q. Did you file the original yourself?

A. No, I did not,—Mr. Whalen filed it, I believe; that is my recollection.

Q. Did you file the assignment?

A. No, I think Mr. Harvey Sullivan filed the assignment. He was the secretary of the company at

(Testimony of Anthony J. Dimond.)

that time. I drew the assignment.

Mr. RITCHIE.—We offer these copies in evidence.

Mr. REED.—Our objection at this time is based upon the fact that these leases are in no way binding upon the lienors in this case—they are binding upon the parties to the leases, but not on the lienors as affecting the title to the property involved in this action. We desire that objection to go to both of these assignments for the purpose of the record. The objection was by the Court overruled and defendant allowed an exception.

Mr. RITCHIE.—They constitute one contract. The second is simply a modification of the first and contains a copy of it, embraces it. I understand, Mr. Dimond, that you have examined this and say it is a copy of the original?

Mr. DIMOND.—Yes, it is.

Mr. RITCHIE.—This copy bears the certificate of Commissioner Love that it is a copy of the record.

The lease and assignment (copies) are marked Plaintiff's Exhibit [30—4] "B"; are attached hereto and made a part hereof.

Q. Do you know what that document is? (Handing witness paper.)

A. Yes, this document is the original assignment which was executed by J. E. Whalen and William Quitsch of the lease which has been introduced here in evidence as Plaintiff's Exhibit "B"—that is the original assignment.

(Testimony of Anthony J. Dimond.)

Mr. RITCHIE.—We offer this in evidence as Plaintiff's Exhibit "C."

Mr. REED.—We make the same objection.

Objection overruled; defendant allowed an exception.

The document is marked Plaintiff's Exhibit "C" and admitted in evidence; it is attached hereto and made a part hereof.

Mr. RITCHIE.—That is all.

Cross-examination.

(By Mr. REED.)

Mr. REED.—In regard to the cross-examination of Mr. Dimond, I will state at this time that my cross-examination will cover a point not brought out in the direct examination and necessarily I will have to make him my own witness for this particular question.

Mr. RITCHIE.—I have no objection to your asking him anything that has a bearing on this case.

Q. You say you are secretary of the company?

A. Yes, sir.

Q. And have been practically at all times?

A. I have been since—I think it was probably May, 1918, I was made secretary. Mr. Sullivan was the first secretary and he served a short time and then I was elected secretary.

Q. There was some conflict between the Free Gold and the men employed to go down there and work in regard to liens they might obtain on the property?
[31—5]

Mr. RITCHIE.—When?

(Testimony of Anthony J. Dimond.)

Mr. REED.—This was along on the fall of 1919, when Bill Quitsch was operating down there. I will ask you also in this connection, weren't there several papers drawn up in which efforts were made to get the men who went down there to work, to forego any claim of lien upon the property?

Mr. RITCHIE.—We object to that as irrelevant.

Objection overruled; plaintiff allowed an exception.

A. As I recollect, there was nothing done in the fall of 1919. In the spring of 1919 a paper was drawn up and signed by nearly all of the people that worked there at the time, in which they agreed to waive the right of lien. As I recollect it, that doesn't apply to the present lien claimants.

Mr. REED.—I don't think it affects these men at all. It was before these men had gone to work that this paper was drawn up and the men who signed that paper had all quit before the men who claim liens now had gone to work down there.

Mr. DIMOND.—That is my recollection of it. I can get the data from my office.

Mr. REED.—I wish you would. I know it doesn't affect these lien claimants, but I want to show the general situation in regard to the Free Gold Mining Co. having at one time had men go down there to work and release their claim of lien and subsequently not being able to get men to go down there, and that was continued as a policy.

Mr. RITCHIE.—We will let Mr. Dimond go and get his papers and I will call Mr. Quitsch. [32—6]

Testimony of William Quitsch, for Plaintiff.

WILLIAM QUITSCH, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. RITCHIE.)

Q. What is your name? A. William Quitsch.

Q. You reside at Valdez and have for how many years? A. Since 1906.

Q. What is your occupation? A. Miner.

Q. That is practically the only occupation you have? A. Yes, sir.

Q. That has been your business during nearly all the time you have been here and is now?

A. Since the Cliff boom, I have been mining.

Q. Are you the William Quitsch who is named in the contract to lease of two mining claims in Harri-man fjord known as the Camp Bird No. 1 and Camp Bird No. 2, in which a lease was made by the Alaska Homestake Mining Company to J. E. Whalen and William Quitsch? A. Yes, sir.

Q. That lease was subsequently assigned to the Free Gold Mining Company? A. Yes, it was.

Q. That was a local corporation here?

A. Yes, sir.

Q. And you are a stockholder in the Free Gold Mining Co., are you not? A. Yes, sir.

Q. And also a stockholder in the Alaska Homestake Mining Company? A. Yes, sir.

Q. Were you one of the locators of these claims?
[33—7] A. No.

Q. Your first interest in them was when you and

(Testimony of William Quitsch.)

Whalen took the lease from the Alaska Homestake Mining Co.?

A. No, it was some time before that—I was sent down to sink a shaft. I sunk a shaft before that.

Q. You did some work for the Alaska Homestake Mining Co.?

A. Yes, under the direction of Mr. Topliff.

Q. When did you first go on there to work for the Alaska Homestake Mining Co.?

A. About a year before,—I don't know the date.

Q. Several years ago? A. Yes.

By the COURT.—What is the date the labor was begun under the lien?

Mr. REED.—In the fall of 1919. The liens set forth that they were all filed shortly after they quit work. The liens were filed January 8, 1920, and the labor was done three or four months prior to that time.

Mr. RITCHIE.—I think the work began about the last of August.

Q. The first lease to yourself and Jack Whalen is dated the 20th of October, 1917; then the next year you got the new lease which modified the terms of the first one and that is dated the first of May, 1918?

A. Yes, sir—I remember now what time I went there.

Q. Did you and Jack Whalen go to work in the fall of 1917 when you first got the lease?

A. Yes, sir.

Q. And you worked pretty steadily after that?

A. Yes, we started about the first of October—shortly after that.

(Testimony of William Quitsch.)

Q. You made an assignment in June, 1918, to the Free Gold Mining Company—that would be three years ago this coming summer?

A. Yes, sir. [34—8]

Q. Did you work on the ground a good deal in the summer of 1918? A. The entire summer.

Q. And were you there in 1919?

A. The entire year, yes,—as I remember.

Q. These boys that brought the lien foreclosure last year, Krampitz, Holland and others—were you out there when they went to work? A. Yes, sir.

Q. They went to work in the latter part of the summer of 1919, a year ago last summer. Were you with the men when they were working there that fall or at least part of the time? A. Yes, sir.

Q. Were you with them up to the time they quit, in January? A. Yes, sir.

Q. Some of them quit in December and four or five of them were working into January, according to the lien? A. Yes, sir.

Q. And you were there until then?

A. I was here in town part of the time, but I was in charge of the work.

Q. And since then, since the 8th of January, a year ago, has there been any work done on the property by the Free Gold Mining Co.? A. No.

Q. Have they had possession of it in any way or done anything about it at all?

A. I shoveled off the buildings the next winter, the winter after that.

(Testimony of William Quitsch.)

The COURT.—What time was it the Free Gold Company quit?

Mr. RITCHIE.—The lien says the 8th of January.

The COURT.—Is that the date of the last work these lien claimants did?

Mr. RITCHIE.—Yes, sir. [35—9]

The COURT.—That is the date that you claim the Free Gold abandoned or gave up the lease?

Mr. RITCHIE.—Yes—the abandonment according to our contention would be 30 or 31 days after they ceased to work, the provision being that the abandonment or forfeiture shall take place automatically after they cease to work for thirty days—that is in the lease.

Q. Do you know anything about a notice being put up there in the summer of 1919 by the Alaska Homestake Mining Company, stating that it would not be responsible for any labor employed by the Free Gold Mining Co.? A. Yes, sir.

Q. Were you there when it was put up?

A. Yes, sir.

Q. Who put that up?

A. Mr. Benson, the present postmaster at the Granite mine.

Q. Did you see the notices after they were put up?

A. Yes, sir.

Q. How many of them were there, and where were they posted?

A. There were three posted, one at the bunkhouse door, a log building; another was posted at the new mill building.

(Testimony of William Quitsch.)

Q. Where in the mill building?

A. Near the door.

Q. Inside or outside? A. Outside.

Q. And right at the entrance? A. Yes, sir.

Q. And the other?

A. It was posted at the blacksmith-shop.

Q. Where is the blacksmith-shop, close to the mill? A. About 200 feet away from the mill.

Q. And how far are these buildings from the entrance to the mine? [36—10]

A. The mill is about 200 feet away from the entrance to the mine.

Q. The buildings are all close together?

A. Yes, sir.

Q. How far from the water are these buildings?

A. I should say about 25 feet.

Q. These claims start practically at the water's edge? A. Yes, sir.

Q. And the buildings are on a moraine or low gravelly spot and the hill rises up from there and the main tunnel runs into the hill a short distance from the low ground? A. Yes, sir.

Q. And were these buildings put on the ground on posts?

A. They are put on mudsills; they are laid in the gravel.

Q. I mean the buildings themselves?

A. Yes, sir.

Q. Among the property which was made subject to the lien is a 7 foot Lane mill—is that still there?

A. Yes, sir.

(Testimony of William Quitsch.)

Q. That is the mill which was being used during the last work there? A. Yes, that was used.

Q. That is in what you call the new mill building? A. Yes, sir.

Q. How is that mill placed?

A. In the first place the building is placed on large timbers to keep it from sinking further into the gravel and the mill is placed on heavy timbers on top of this bottom timber, bolted.

Q. Then there is a 25-horse power Foos gas engine—is that in the same building? A. Yes, sir.

Q. How was that placed on the ground? [37—11]

A. In a very similar manner to that of the mill.

Q. On mudsills and bolted? A. Yes, sir.

Q. And where are the steel rails?

A. They are simply laid in the tunnel, underground.

Q. Tunnel tracks like any other mine?

A. Yes, sir.

Q. Were there some rails not in the track there, a few not in use?

A. No, not to amount to anything.

Q. How many cars were there?

A. There were two cars on the ground.

Q. What pipe was there?

A. There was some two-inch pipe and one-inch pipe, principally for conducting water.

Q. For draining the mine?

A. No, just for carrying fresh water to the machinery.

Q. Where did you get the fresh water?

(Testimony of William Quitsch.)

A. From a point about 400 feet up the hillside.

Q. This pipe was laid to convey the water from that source down to the mill and bunkhouse for use there? A. Yes, sir.

Q. Forge— That is in the blacksmith shop?

A. Yes, sir.

Q. Beltings and pulleys—those were connected with the Lane mill? A. Yes, sir.

Q. Tools—that I suppose is general tools, hammers, etc.? A. Yes, sir.

Q. Hose—what hose was that?

A. Air hose, mostly, from the end of the pipe to the machine.

Q. One ten by ten Ingersoll air-compressor? [38—12]

A. That was in another building, near the mill, I think.

Q. Close beside it? A. Yes, sir.

Q. How was that placed in position?

A. It was placed on heavy timbers and the compressor was bolted on to these heavy timbers.

The COURT.—The mill and engine and all were imbedded in the ground; they were not laid on it, on top of the gravel?

A. That was the scheme a good deal, to lay them on top, so they could be leveled up good and then they were filled up with gravel, after they had been placed in the correct position.

The COURT.—Were they sunk in the ground at all? A. No.

(Testimony of William Quitsch.)

(By Mr. RITCHIE—Continued.)

Q. Did you dig a trench and put them in?

A. We did, to a certain degree.

Q. You dug it enough to get a level bottom, of course? A. Yes, sir.

Q. One receiver? A. That is there.

Q. What does that refer to?

A. It receives the air.

Q. That is attached to the compressor?

A. Yes, sir.

Q. One 25-horse power Fairbanks Morse gas engine and equipment—where was that placed?

A. It was placed in a small building with the compressor and used in connection with the compressor.

Q. One 7 by 8 inch Dodge Crusher—where was that?

A. That was placed in the new mill building—placed in position [39—13] to be used as a crusher—in the same building with the Lane mill.

Q. It was placed the same way, on mudsills?

A. Yes, on the same frame, it was built up.

Q. The stopers, three jack-hammers and one six-horse power Fairbanks hoist engine and cable—where were they?

A. The stopers mostly were in the blacksmith-shop or in the mine and so was the hoist, the hoist being in the station inside the mine, near the shaft.

Q. One two-horse power Fairbanks Morse engine—where was that?

A. That was standing outside near the blacksmith-shop.

Q. One Gibson mill and equipment including con-

(Testimony of William Quitsch.)

centrators and four amalgam plates—where were they?

A. They were in the old mill building except the amalgam plates were with the Lane mill.

Q. The amalgam plates belong to the Lane mill?

A. I would say that they did, as long as we put them with the Lane mill. Of course, I didn't take them when I bought the Gibson mill.

Q. About those notices—they remained where they were posted for a long time? A. They did.

Q. Were they there when you left there?

A. Yes, sir.

Q. Do you know whether or not the men who were parties to this suit of Krampitz against the Free Gold Mining Co. saw them, of your own knowledge? Did you ever hear them discussing it or were you by when any of them read them?

A. Well, I wouldn't exactly say—it was impossible that they didn't see them. [40—14]

Q. Were they posted there before these men went to work? A. No, they were not.

Q. To refresh your memory, I will ask you if Benson didn't post them in the month of June?

A. Yes, June 25th—he marked it down with a pencil.

Q. He wrote the date down? A. Yes, sir.

Q. While these men went to work in August, according to their own statement?

A. Yes, sir; the last day of August.

Q. And the date that Benson wrote when he posted them, June 25th, was the correct date or

(Testimony of William Quitsch.)

within a day or so of it? A. Yes, sir.

(Questions by the COURT.)

Q. Did you ever talk to any of these men yourself about this notice and their rights?

A. Yes, sir.

Q. You discussed this notice with these men who filed these liens?

A. Yes, lots of time we were talking about that.

Q. Was the intention in putting this mill and the other machinery there that it was to remain there permanently as working machinery for the mine?

A. Yes, that was the intention. I had nothing to do with the management of the company at that time, I wasn't a director of the company.

Q. Where is Whalen now?

A. I don't know; the last I heard of him he was in the Texas oil fields.

By Mr. RITCHIE.—You have read the lease and you understand thoroughly that it provides that everything put on by the Free Gold [41—15] Mining Company during the period of the lease should remain there—that was the agreement?

A. Yes, all tools and equipment and machinery—it was my understanding that way.

Mr. RITCHIE.—That's all.

Cross-examination.

(By Mr. REED.)

Q. Did you employ some of these lien claimants—I will state their names: John F. Keller, Kristop Lahz, Nick Meckem, William Holland, Christ H. Schiffer— Did you employ them on behalf of the

(Testimony of William Quitsch.)

Free Gold Mining Company? A. Yes, sir.

Q. You employed them all? A. Yes, sir.

Q. And you were the manager of the Free Gold Mining Company? A. Yes, sir.

Q. Do you remember employing Mr. Holland—
Do you remember the time you employed him?

A. Yes.

Q. And at one time, did you present him a waiver of lien on this property down there, in case he went to work for the Free Gold Mining Company?

Mr. RITCHIE.—We object to that as irrelevant.

Objection overruled; plaintiff allowed an exception.

A. I don't know that I understand you.

Q. Did you try to get Mr. Holland to go to work without claiming a lien on the ground or upon the machinery? Did you have a paper drawn up so if he signed it he would go to work without claiming any lien rights on the property?

A. No. [42—16]

Q. You did not?

A. No. I did have a paper drawn up by Mr. Dimond when I first got to be manager of the company. I presented it to Herman Hill, possibly, somebody else and everybody that seen it would simply turn away and say, "I don't need work that bad," so I wouldn't present it to anybody else.

Q. You don't recall presenting it to Mr. Holland?

A. No, sir; I did not.

Q. You don't recall presenting it to any of these lien claimants? The ones I have just named?

(Testimony of William Quitsch.)

A. No, I never presented it to anybody else any more.

Q. Now, in regard to all this property that was down there, at the time that this property was placed upon the ground—didn't all of that property belong to the Free Gold Mining Company, with the exception of one two-horse power Fairbanks Morse engine and one Gibson mill and equipment?

Mr. RITCHIE.—We object to that as irrelevant.

Q. At the time that all of this property with the exception of one two-horse power Fairbanks Morse engine and one Gibson mill and equipment, at the time it was placed upon these mining claims, the Camp Bird Number 1 and 2, did it not belong to the Free Gold Mining Company?

Same objection.

The COURT.—The objection will be overruled *pro forma* and I will consider it in considering the case.

Plaintiff allowed an exception to the ruling.

Q. Wasn't all of this property the property of the Free Gold Mining Company at the time it was placed upon the Camp Bird No. 1 and 2, except the two items mentioned?

Same objection, ruling and exception.

A. Yes, sir. [43—17]

Q. The two items I have just mentioned, one two-horse power Fairbanks Morse engine and one Gibson mill and equipment—that was the old property of the Alaska Homestake Mining Co.?

A. Yes, those three engines are included.

(Testimony of William Quitsch.)

Q. And all the rest of it was bought and paid for by the Free Gold Mining Company and put up on the ground? A. Except the forge.

The COURT.—What was the proportion of the property that was put on, would it be a quarter or what—the property that was on there?

A. One-sixth would be more nearly it.

The COURT.—That would be about $\frac{1}{6}$ of the whole? A. Yes, sir.

(By Mr. REED.)

Q. Now, all of this property, with the exception of these two items mentioned as being the property of the Alaska Homestake Mining Co., was that second-handed machinery, or was it new machinery?

A. That the Free Gold Mining Co. put on?

Q. Yes.

A. It was for the most part second-handed machinery.

Q. Is it not true, that practically all of it, the heavy pieces, were bought from the Granite mine?

A. Yes, sir.

Q. And taken away from the Granite and taken down to the Free Gold? A. Yes, sir.

Q. As to the character of the buildings down there, aren't they all single-board buildings, temporary structures, with corrugated iron roofs—single-board buildings? A. Yes, sir. [44—18]

Q. All of this machinery, the heavy machinery, to disconnect it from anything it was attached to, all it would require would be to take out a bolt or nut? A. Yes.

(Testimony of William Quitsch.)

Q. And you could move any part of that machinery and take it any place? A. Yes.

Q. It was moved down there, wasn't it?

A. Yes, sir.

Q. You say it was bolted to heavy timbers?

A. Yes, sir.

Q. That was to hold the machinery in place while it was being used? A. Yes.

Q. Now, in regard to taking that machinery out—could that machinery be taken apart and removed without any injury to the buildings?

A. Yes, sir.

Q. There is none of it cemented—there was no cement used in connecting any of it to the ground?

A. The only cement I found was under the muffler—it appeared to be cement, I don't know.

Q. You don't know whether it was cement or not?

A. No.

Q. And you don't know whether it held any machinery in place or not?

A. I don't know whether it was cement or not; it was some hard substance.

Q. In regard to one two-horse power Fairbanks Morse engine, there wasn't any connection there to the real property—it [45—19] was lying in the building without any attachment at all, wasn't it—it wasn't connected with the building at all, was it?

A. No, in the same manner as the compressor.

Q. It was just in place without being attached to any part of the realty or buildings? A. Yes.

Q. The same would be true of the Gibson mill and

(Testimony of William Quitsch.)

equipment,—that wasn't attached to the building, was it? Was that screwed to anything?

A. It was fastened to the foundation timbers—in the old mill building.

Q. You moved that, didn't you? A. Yes, sir.

Q. You took out the bolts and screws?

A. Yes, sir.

Q. And moved it without any damage to the foundation or the real property? Did you damage the real property? A. No.

Q. Now, Mr. Quitsch, at the time, or prior to the

Q. Now, in regard to the 25-horse power Fairbanks Morse gas engine that was in the same position, bolted down, as the compressor?

A. Yes, sir.

Mr. RITCHIE.—I admit that all of this machinery could be carried away without doing any damage to the real property, that is to the mining claims—I mean without any damage to the remaining real property. I admit it can be separated from the ground without doing any damage to the remaining premises.

The COURT.—The ground will be as good as it was before?

Mr. RITCHIE.—Yes.

Q. Now, Mr. Quitsch, at the time, or prior to the 8th day of January, 1919—that was the date that you and most of the men returned [46—20] from the mining claims to Valdez, wasn't it? A. Yes.

Q. Prior to that time there was some discussion about the liens of the men that worked there, was there not? A. Yes.

(Testimony of William Quitsch.)

Q. Was there quite a good deal of discussion among the men about getting their money?

A. When?

Q. I will ask you this question—shortly prior to January 8th, in the compressor building, in your presence and in the presence of Nick Meckem and William Holland, did you hear Holland ask whether in view of the notices that were posted their claims would be collectible, and you said, to these two men, well, the machinery is good for the labor, isn't it?

Mr. RITCHIE.—We object to that as irrelevant for the reason that no statement made by Mr. Quitsch could be binding on the Homestake Mining Company. It would be a matter of legal opinion anyhow. He was manager of the Free Gold Mining Co., not of the Alaska Homestake.

The COURT.—I will overrule the objection, *pro forma*, and it will be considered in connection with the legal phrase of the whole matter.

Plaintiff allowed an exception to the ruling.

Q. Did you make that statement?

A. I wouldn't say, but the chances are I did, because that was my belief at that time.

Q. That was your belief at the time, that the machinery that was down there belonging to the Free Gold Mining Co. was subject to these labor claims?

A. Yes, because it wasn't stated on the notice.

Q. And you conveyed that belief to practically all of these men [47—21] that were down there, at various times.

Objected to as irrelevant; objection sustained.

(Testimony of William Quitsch.)

Q. You conveyed that statement direct to all these men?

MR. RITCHIE.—We object to any conversation between these men, between Mr. Quitsch and these claimants, as to their rights.

By the COURT.—He may ask if he told them that, and it will be considered the same as the other question.

Plaintiff allowed an exception to the ruling.

Q. Did you tell them that?

A. I don't know; I didn't make any special speech, I don't suppose, but I do believe that everybody thought that, understood it that way.

The COURT.—That was your own opinion?

A. That was my own opinion.

Q. And you stated that opinion to the men that were down there working, did you not?

Same objection, overruled and exception allowed plaintiff.

A. I believe I did, all right.

Q. And you stated it not once, but probably a dozen times,—at different times?

Objected to for the same reason, overruled; plaintiff excepts.

Q. Did you state it as many as a dozen times to these men, on different occasions?

A. Oh, I suppose so.

Q. You knew of the time they filed these liens—you were here in town and they told you?

A. Yes, sir.

Q. After they told you of having filed the liens,

(Testimony of William Quitsch.)

there was some talk among them of bringing suit for foreclosure? A. Yes, sir.

Q. And they conveyed that knowledge to you?
[48—22]

A. Yes, sir.

Q. And is it not a fact that up to March 19th, which is the date that this suit was filed to foreclose those liens—did you not, at a great many times between January 8th and March 19th, try to induce these men not to commence this suit, hoping to get the financial affairs of the Free Gold Mining Company straightened out?

Mr. RITCHIE.—We object to that as irrelevant and incompetent, first, because Mr. Quitsch was not representing the plaintiff in this case, the Alaska Homestake Mining Co. In the second place there was an automatic forfeiture on the 31st day after the Free Gold Company ceased work; and finally there is no lien given by the sweeping Alaska lien law on personal property except particular machinery such as dredges and mills.

Objection overruled, *pro forma*, and exception allowed.

Q. The question is, between January 8th and March 19th, after those liens were filed, did you not seek to avert suit against the Free Gold Mining Co. by those lien claimants? A. I did.

Q. And you made every effort down to March 19th to do that? A. Yes, sir.

Q. And you continued your efforts to avert a sale of the property up to the time that the sale was

(Testimony of William Quitsch.)

actually made, which was the 15th of June?

A. I didn't know anything about the sale.

The COURT.—What did you do?

Q. What did you do to try to stop them from bringing the suit—you told them to hold off, that you would get things straightened out, didn't you?

A. Yes, I asked them to wait as long as the law would let them, to give us a chance to reorganize.
[49—23]

Q. Did you tell them that you tried to get an extension of the lease from the Alaska Homestake Mining Company?

A. I am not sure whether we had a lease or not but we did consider a ten-year lease on it just the same.

Q. Did the Alaska Homestake Mining Company reject that proposition?

Mr. RITCHIE.—We object to that as irrelevant.
Objection overruled—plaintiff excepts.

Q. Did you telegraph for an extension of the lease to the Alaska Homestake Mining Company?

A. Yes, I believe I did.

Q. And do you know about the time you telegraphed them—was that after March 19th?

Mr. RITCHIE.—We want to see the originals or copies of the telegrams.

The COURT.—Yes, you have gone far enough into that; it can only be considered, if at all, that it might work a forfeiture.

Q. There was no notice of forfeiture served upon you as manager of the company by the Alaska

(Testimony of William Quitsch.)

Homestake Mining Co? A. No.

Q. And has not been to this date? A. No.

Q. And you say last winter you shoveled off the snow from the buildings? A. Yes, sir.

Q. Did you do that as representing the Free Gold Mining Co., the lessee?

A. I really won't say—yes, I did. I used the Free Gold Company money to do it with—I paid it out of the Free Gold Mining Co. money.

Q. Was that in the fall of 1920? [50—24]

A. Yes, in the winter or early spring some time.

Q. How long ago was it? A. A year ago.

Q. It might have been the fall or spring—do you recall just when?

A. It was the winter; it wasn't the fall or spring.

Q. There leases were made in the State of Washington between you and the Homestake people, drawn up in Seattle, were they, and signed out there?

A. I don't think so—I think they were drawn up here in Valdez.

Q. And signed out there?

A. I don't know about that.

Mr. RITCHIE.—The record shows that Mr. Whalen signed the second lease in Seattle for himself and as attorney in fact for Mr. Quitsch.

Mr. REED.—That is all.

Mr. RITCHIE.—At this time we move to strike from the record of the witness' testimony all statements as to who installed the various articles of machinery and equipment.

(Testimony of William Quitsch.)

Motion denied; plaintiff excepts.

(Question by Mr. RITCHIE.)

Q. To refresh your memory, I will ask you if you did not a short time ago state to me that the following articles were placed on the ground by the Alaska Homestake Mining Co. and were there when the Free Gold Mining Co. took possession, or when you and Whalen took possession—the Gibson mill, the concentrating table; a four-horse power Witte engine, two three-horse power Witte engines, a two-horse power Fairbanks Morse engine and hoist, blacksmith buildings and tools? A. Yes.

Q. You forgot them when Mr. Reed was asking you about certain [51—25] things that were there—he asked you if two or three machines were not the only things there—these were there?

A. Yes.

Mr. REED.—The two items mentioned here are not included in the sale; that is the reason.

Witness excused.

Testimony of A. J. Dimond, for Plaintiff (Recalled).

Mr. A. J. DIMOND, recalled.

(By Mr. REED.)

Q. Who, if anybody, has charge of the affairs of the Free Gold Mining Company at this time?

A. The Free Gold Mining Company is dead—I have all the papers in my possession, all the papers of the corporation.

Q. To your knowledge has the Free Gold Mining Company or anyone else authorized by it asserted

(Testimony of A. J. Dimond.)

any rights to the mining claims or any property involved in this matter since last winter?

Mr. REED.—I object to the statement that the Free Gold Mining Co. is dead.

The WITNESS.—I withdraw that; there is no activity at all in the company's affairs. It is moribund, you might say; they are not doing anything, and the company is heavily in debt and has no money to proceed.

Q. I will repeat the question: To your knowledge has the Free Gold Mining Company or anyone else authorized by it asserted any rights to the mining claims or any property involved in this matter, since last winter?

A. As far as I know, it has not. [52—26]

Q. Is there any other person than yourself or Mr. Quitsch here who represents the Free Gold Mining Co. in any way? A. No.

Q. You are secretary of the company?

A. I am the secretary of the company and Mr. Quitsch manager, I think; we had a treasurer but I don't know who it is now—I think it was Harry Wilson who has gone outside.

Q. The company as far as you know has not done any work on the property since Mr. Quitsch shoveled the snow last winter? A. That is true.

Mr. RITCHIE.—Paragraph 7 of our complaint recites the posting of the notice of nonliability for labor, and a copy is attached to the complaint. That paragraph is not denied. I intended to bring over a copy of that notice and introduce it as an

(Testimony of A. J. Dimond.)

exhibit and I ask permission to do that.

Mr. REED.—We don't deny the fact that it was posted or the wording of the notice, but we make the same objection that it is not binding as affecting the title to the property involved.

Objection overruled; defendant excepts.

The notice is admitted in evidence as Plaintiff's Exhibit "D," is attached hereto and made a part hereof.

Mr. RITCHIE.—That is all.

(By the COURT.)

Q. Mr. Dimond, you were active in the management of this company while it was operating?

A. Yes, sir.

Q. Do you know about the employment of these men whose liens are involved here—do you know of their original employment?

A. No; Mr. Quitsch was manager; he employed them.

Q. This paper that you drew up here, while it is not in the record [53—27] —that was made on the part of the company, to get men to accept employment at that time and to take their pay on bedrock—take their pay out of the cleanups?

A. It was early in the spring of 1919 that was done and later it was abandoned. I don't recollect now just the exact time, but some time during the summer I drew up a paper for Mr. Quitsch providing they should be paid on bedrock and as he testified to-day, he told me he mentioned it to one or two men and they refused to go to work and it wasn't

(Testimony of A. J. Dimond.)

followed after that. The men who did sign the paper originally were all stockholders and were all heavily interested in the company as stockholders and were anxious to see it go ahead and for that reason went to work and voluntarily waived a right to file a lien.

Q. Are any of these claimants in this case stockholders?

A. Mr. Quitsch is; I don't think the rest are but Mr. Holland may be.

Q. Has Mr. Quitsch filed a lien here?

A. No.

Q. You had no personal talk with any of these men having liens here?

A. As far as I recollect now, I never had any conversation with any of them; I certainly had nothing to do with their employment. I may have spoken to them about the employment, but I didn't have any authority to employ them, and as far as I recollect, I didn't advise them at all.

(By Mr. REED.)

Q. You say you had no conversation yourself with any of these men and anything that Mr. Quitsch may have told them was not in accordance with any authority, as coming from you relative to the matter? [54—28]

A. That is my recollection. I can't recollect that I had any talk with any of them. I may have discussed it with Mr. Quitsch but I don't recollect it; we talked over so many things concerning the property that I can't say now what I said to Mr.

(Testimony of A. J. Dimond.)

Quitsch. I am quite positive, though, that I never talked to the claimants.

Q. Have you a copy of this waiver of lien?

A. I have a copy of the contract made in the spring; that is dated May 20, 1919. It is five pages and a half long and it contains this provision—all persons performing work or labor—

Mr. RITCHIE.—We object to that.

Objection sustained.

(By Mr. REED.)

Q. As an officer of the Free Gold Mining Co. I will ask you this question: Has the Free Gold Mining Co. ever been served by the Alaska Homestake Mining Co. with any notice or declaration of forfeiture obtained under the terms of this lease?

Mr. RITCHIE.—We object to that.

Objection overruled plaintiff allowed an exception.

A. So far as I know, it has not.

Mr. RITCHIE.—In order to keep the issues clear, I move to strike the questions propounded by the Court to Mr. Dimond and Mr. Dimond's answers thereto.

Motion denied; plaintiff allowed an exception.

Witness excused.

Mr. RITCHIE.—Plaintiff rests.

Mr. REED.—I wish to ask for the dismissal of plaintiff's cause of action in this case by reason of the fact that the plaintiff [55—29] has failed to make a *prima facie* case.

By the COURT.—I would rather take the matter

(Testimony of R. A. W. Krampitz.)

up at the conclusion of the case. At this time the motion will be denied and exception allowed.

DEFENSE.

Testimony of R. A. W. Krampitz, in His Own Behalf.

R. A. W. KRAMPITZ, the defendant, called and sworn as a witness in his own behalf, testified as follows:

Direct Examination.

(By Mr. REED.)

Q. You are the defendant in this case?

A. Yes, sir.

Q. And you were the plaintiff in Cause #1029 in which suit was brought to foreclose your lien and certain labor liens assigned to you and which went to a judgment? A. Yes, sir.

Q. You worked on the Free Gold Mining Co. property in the fall of 1919—when did you quit work?

A. I quit work, I guess, the 8th day of January, 1920.

Q. And you came to Valdez with the others?

A. Yes, sir.

Q. And Mr. Quitsch came with you at that time?

A. Yes, sir.

Q. How long did you work there, how many months?

A. Why, I believe I got down there the 10th of November, 1919, either the 10th or 11th.

Q. And your wages were not paid and you filed

(Testimony of R. A. W. Krampitz.)

your lien and brought this suit on behalf of yourself and the other lien claimants?

A. Yes, sir.

Q. Now, going to the question as to the character of this property down there, I will ask you to state in regard to the 7-foot Lane Mill—how was that in place? [56—30]

A. Why, I believe that Mr. Quitsch described that part pretty well—I think that it is put in place as he described it and that it can be removed very handy and easy.

Q. All of this property practically came from the Granite Mine? A. That is what I am informed.

Q. Just describe the building in which it was placed—how about the side walls? Were they thick walls or just one-boarded wall?

Mr. RITCHIE.—We object to that, as the buildings are not in issue.

Q. How was it, was it bolted down?

A. No, I didn't see any bolts in it.

Q. You didn't see any bolts in it?

A. No, the buildings are put up like an ordinary building and I don't think it is very hard to move those things, if a man has to move them.

Q. What about the one 25 h. p. engine?

A. That is put up on sills and just bolted down.

Q. Was any of this machinery cemented to the ground? A. Not to my knowledge.

Q. Was any of this machinery placed on the ground itself? How was it all placed, on timber?

A. I think it was all placed on timbers, sills.

(Testimony of R. A. W. Krampitz.)

Q. And the steel rails, cars, pipes, tools, etc.—that was all loose personal property? A. Sure.

Q. The one 10 by 10 Ingersoll Air-compressor—what building was that in?

A. That is in a separate building from the mill building, only one board walls and I believe tar paper on the outside of it; just rough boards used for the building.

Q. Was that bolted, the air-compressor? [57—31] A. That was bolted down on sills.

Q. One receiver—where was that?

A. Outside of the building. It was just connected up with the pipe.

Q. Was it fixed in any way to the ground?

A. No.

Q. How about the Fairbanks-Morse 25 h. p. gas engine and equipment—was that bolted?

A. I suppose it was—it had to be or wouldn't stay in place.

Q. And that was inside of the building?

A. Yes.

Q. And in regard to the one 7 by 8 Dodge Crusher—what building was that in?

A. That was in the mill building, up above the mill.

Q. Was that bolted down?

A. It was bolted to some fixture there because it is above the mill.

Q. Three jack-hammers and one 6-horse power Fairbanks hoist engine and cable—that was disconnected from anything, was it?

(Testimony of R. A. W. Krampitz.)

A. It is moved now—yes, it was in the mine, but is moved now.

Q. It was in the mine? A. Yes.

Q. Was it in any way connected with the mine?

A. I couldn't tell you in what way it was connected—whether it was only setting on its own weight or if it was screwd down. I couldn't tell you anything about that, but it has been moved.

Q. In the operation of the mine was that moved around a good deal?

A. No, it was always stationary; it was in one place.

Q. And you are not sure whether that was bolted to anything or not? [58—32]

A. I couldn't tell you.

Q. One two-horse power Fairbanks engine and one Gibson mill and equipment—where were they?

A. There was an engine or two of them lying around on the hillside and it seems to me that this Gibson mill was—I don't know whether she was in place or not but she was in a kind of old shack there, an abandoned shack.

Q. Was that in any way connected?

A. Not to my knowledge.

Q. How about the Fairbanks engine—was that in any way connected? A. No, it was loose.

Q. And the concentrators and three amalgam plates? A. They were connected.

Q. I will ask you this question: Could this machinery be moved out of these buildings without in any way impairing the buildings?

(Testimony of R. A. W. Krampitz.)

A. Sure it could.

Q. Without damaging them? A. Yes, sir.

By the COURT.—The machinery is still on this ground? The machinery you sold at this sale?

Mr. REED.—Most of it—some of it has been moved.

The COURT.—I will change my ruling then—when you asked about the buildings I thought they were buildings not containing machinery.

Q. Most of this machinery was in buildings?

A. Yes, sir.

Q. Describe the character of the buildings. As to whether there are side walls, and the ground and back walls—describe their thickness. [59—33]

A. They are only one-inch boards, that is the compressor-room, as far as I could see—I haven't examined them, but that is the way they appear to me, and they are just put up as an ordinary shack here in Valdez, but of course the mill building is put up a little bit better but I think they are only single boards. The mill building, I think, is either shiplap or rustic on the outside, but I think they are only single boards, though, but there is a double door that can be opened for any purpose, to take in large or small stuff.

Q. Now, in regard to the conversation which occurred shortly prior to January 8th in the concentrator-room, at which Mr. Quitsch was present and Nick Meckem was present—state what that conversation was.

Mr. RITCHIE.—We object to the conversation as

(Testimony of R. A. W. Krampitz.)

incompetent and irrelevant and not binding on the Alaska Homestake Mining Co.

Q. And what Mr. Quitsch said about it?

The objection was overruled and plaintiff allowed an exception.

A. It was in the compressor-room; I don't know who was there—there were some of the fellows there and he made a remark, "The chances are pretty slim about getting our money"—I think it was Nick Meckem or somebody—and Quitsch made the remark that the machinery ought to be worth enough to pay the labor, that was on the ground, because he thought that it was in the Free Gold Mining Co., that we were dealing with the Free Gold Mining Co.—we were no Homestake Mining Company men.

The COURT.—Who thought that?

A. Mr. Quitsch and I did too and I guess all the rest of them did.

Mr. RITCHIE.—We move to strike what the gentlemen thought.

The COURT.—Yes, it may be stricken.

Q. Was there any other conversation between you and Mr. Quitsch [60—34] relative to the same subject, growing out of the notices that were posted down there, in regard to the machinery?

Same objection; overruled; plaintiff excepts.

A. Well, there was some more talking, about on the same line—I don't know whether the same words were used or not.

(Testimony of R. A. W. Krampitz.)

Q. (By the COURT.) You read these notices yourself?

A. Yes, sir.

(Questions by the COURT.)

Q. And saw it referred to a certain record here in the Commissioner's office and the book and page?

A. I couldn't say; I read the notice and I see that the notice was only applying to the two mining claims and I didn't pay any attention because there was nothing said about any machinery.

Q. Do you recollect that there was something said about a lease? A. I couldn't tell you that.

Q. You never came to the Commissioner's office to look up the lease? A. No, I never did.

(By Mr. REED.)

Q. State the conversation you had with Mr. Quitsch—what was said by him about the machinery.

A. I made the statement before that Mr. Quitsch thought that the machinery would bring more money than what the liabilities were of the Free Gold Mining Co.

Q. Did he state that?

A. That is the way he put it—I don't know if he made that very statement or not, but that is the way he put it, that the machinery would cover the labor.

Q. Now, after your liens were filed on January 10th, did Mr. Quitsch have any conversation with you and the other lien claimants [61—35] in regard to not bringing an action to foreclose your lien?

Mr. RITCHIE.—We object, as irrelevant and incompetent.

(Testimony of R. A. W. Krampitz.)

Objection overruled; plaintiff excepts.

A. He did.

Q. How many times did he endeavor to do this?

A. That is hard to say. He saw me pretty near every other day or a couple of times a week. Every time we met we had a talk about it and I told him if the Free Gold Mining Co. could do anything I wouldn't foreclose the lien or bring suit against them, because I didn't want them to spend any money, I would rather have them spend it on the ground and I gave them all the time there was, until the 19th of March, and after that Mr. Quitsch thought he could make good yet and I told him if he could it would suit me very well.

Q. Did you talk with him on the same proposition after that?

A. Sometimes he talked a little about it after I filed the suit, several times.

Q. Now, is there anything else you want to state in regard to this case that I have omitted to ask you the specific questions about?

A. I don't know; I don't think so—I don't think there is.

Mr. REED.—That will be all then.

Cross-examination.

(By Mr. RITCHIE.)

Mr. RITCHIE.—I desire to move to strike all of the witness' testimony as to conversations with Mr. Quitsch about his wages.

Motion denied; plaintiff allowed an exception.

Q. Mr. Krampitz, when you made your arrange-

(Testimony of R. A. W. Krampitz.)

ment with Mr. Quitsch to go over there to work, did you ask him what assurances he could give you that you would get your wages? [62—36] A. No, sir.

Mr. RITCHIE.—That's all.

(By the COURT.)

Q. What is the total amount involved in this case—there are how many claimants? A. Six.

Q. What is the total claimed.

A. I couldn't just exactly tell you but it is about \$1,900, I believe.

Mr. REED.—It is about \$2,000.

Q. What is the amount of the cleanup?

Mr. REED.—The amount that they realized from the assay office was \$892.70 and there is \$111.50 of that amount that is in controversy in this action on the claim of 12½%.

Q. That was all the gold brought?

Mr. REED.—Yes, sir.

Mr. RITCHIE.—About \$780 is undisputed as belonging to the lien claimants.

Q. How much of your claim has been received?

A. I received for my share about \$40.40, I think.

Q. What is the amount of your claim?

A. The amount of my claim was \$265, I believe, or \$263,—I can't just state to the cent now.

Q. Who bought the machinery? A. I did.

Q. Are you able to make any disposition of it if you have the right to do it?

A. The hoist is practically disposed of now and also the Gibson mill—I don't know who they belong to but I bought them in.

(Testimony of R. A. W. Krampitz.)

Q. Did you sell the machinery that was on there before the Free [63—37] Gold Mining Co. took hold—there was certain machinery that was on the property before?

Mr. REED.—Yes, sir. These two items of the Homestake Co. and all of the Free Gold Co. were included in the sale and bought in by Mr. Krampitz.

The COURT.—That is what Mr. Quitsch said he would figure as about one-sixth of the value of the whole?

Mr. REED.—Yes, sir.

(By the COURT.)

Q. You have talked to these men who assigned these claims to you, at the time they went to work and during the time they worked, about their claim?

A. Yes, sir.

Q. And you say they went on the theory that the machinery was good for their wages?

A. That is what we thought, it ought to be, but I wasn't sure. Somebody made a remark about that notice posted up there and Mr. Quitsch said then, the machinery ought to be good for it because that don't apply to this notice.

Q. You never went to look at the lease itself?

A. No.

Mr. RITCHIE.—At this time we move to strike from the record and the consideration of the Court the discussion just held by the Court with the witness as to his understanding and conversations.

Motion denied; plaintiff allowed an exception.

Mr. RITCHIE.—I want to ask Mr. Krampitz a

(Testimony of R. A. W. Krampitz.)

question—Mr. Krampitz, what would you say was the fair and reasonable value of all the machinery and tools there on the ground?

A. Well, I made an offer of \$2,000.

Q. That was the value about the time of the sale and you consider it about the same value now?
[64—38]

A. Yes, sir.

Q. Taking from the amount whatever you sold to Bill Quitsch?

A. I didn't figure that in the first place.

Q. Leaving out what has been sold to Billy Quitsch, you figure that \$2,000 was a fair valuation?

A. Two thousand dollars is a fair value for that machinery.

Mr. REED.—The balance is on the property?

A. Yes, sir.

Witness excused. [65—39]

Testimony of William Holland, for Defendant.

WILLIAM HOLLAND, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. REED.)

Q. You are one of the lien claimants and assigned your claim to Mr. Krampitz for the purpose of making collection of same? A. Yes, sir.

Q. And you worked down on this property probably as long as any of these other claimants?

A. I was the first man to go down there—we

(Testimony of William Holland.)

worked one day in August.

Q. I will ask you, before you went down there, was anything said to you at the time by Mr. Quitsch as to waiving your lien rights, was any paper presented to you? A. Yes, sir.

Q. And did you sign it? A. No, sir.

Mr. RITCHIE.—All these questions go in under my objection.

Objection overruled and exception allowed.

Q. You say you went to work in August?

A. Yes, sir.

Q. And your claim was for wages for work done prior to January 8th? A. Yes, sir.

Q. And you quit with the rest of them on January 8th and came to Valdez? A. Yes, sir.

Q. Did you have any conversation with Mr. Quitsch relative to the machinery? A. Yes, sir.

Q. State what those conversations were.

A. Why, he told me that the machinery was good for the wages—that this notice he didn't think covered the machinery.

Q. And how many times did he make that statement to you? [66—40]

A. I couldn't tell you,—several times.

Q. And now in regard to the buildings there—describe those buildings briefly, the thickness of the walls?

A. Those buildings are one-inch boards, single walls, and that is all that any of them are.

Q. Were you there when any of this machinery was put in? A. No, sir.

(Testimony of William Holland.)

Q. What would you say as to how this machinery was put in place—how was it connected?

A. It was set down on timbers and screwed down to the timbers.

Q. And could that all be removed by loosening the bolts and screws. A. Yes, sir.

Q. Without any damage to the timber it was setting on? A. Yes, sir.

Q. And could you move the machinery without damage to the buildings? A. Yes, sir.

Q. Would any of the boards of the building have to be removed to take the machinery out?

A. No, I don't think so.

Q. And some of this property is disconnected with the ground entirely? A. Yes, sir.

Q. Now, you had conversations with Mr. Quitsch after he came to Valdez? A. Yes, sir.

Q. And up about March 19th? A. Yes, sir.

Q. State if you recall what he said about filing suits.

Mr. RITCHIE.—We object to any conversations between the witness [67—41] and Mr. Quitsch after he quit work.

Objection overruled; plaintiff excepts.

Q. State what the conversation was.

A. He said that he was trying to get a lease from the Homestake people and it was tied up to the Free Gold again—we would all get our money—he thought they would reorganize and go to work again.

Q. Did he say he got the lease after that?

A. He got the lease, I believe, ten days after we

(Testimony of William Holland.)

filed on the machinery, if I remember right,—something like that.

Q. In regard to the gold amalgam that the lien was placed upon—was that brought up from the ground at the time we made your claim?

Mr. RITCHIE.—We object as irrelevant.

Objection overruled; plaintiff excepts.

A. No, sir, it was brought up before then.

Q. Who brought it up? A. Billy Quitsch.

Q. It was brought up before January 8th?

A. The gold brick, you mean?

Q. Yes.

A. Yes, it was brought up—I couldn't tell you, in the middle of December some time.

Q. He came to Valdez and then returned and after he returned what did he tell you—what did he tell the boys in regard to their work?

Objected to as irrelevant.

Objection overruled; plaintiff excepts.

A. Why he said, "It is all off; we will pack up everything and go to town and quit working," he said.

Q. And you all came to town? [68—42]

A. Yes, sir.

Q. Did you have any conversation with him in regard to your liens or the notices posted?

A. Not as I remember; at that time I did not.

Witness excused.

Testimony of J. H. D. Bouse, for Defendant.

J. H. D. BOUSE, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. REED.)

Q. You are deputy United States marshal?

A. Yes.

Q. I will ask you to state whether or not on or about April 30th of this year Mr. Ritchie, on behalf of Mr. C. P. Topliff and claiming through the Alaska Homestake Mining Co., filed in your office an affidavit of claim to 12½% interest in the gold that was then being offered for sale?

A. Yes, sir; about that time.

Q. This is a copy of the affidavit? (Handing witness paper.)

A. Here is the original (producing paper).

Q. Now, that gold was sold on May 15, 1920?

A. May first, wasn't it?

Q. Yes, May 1, 1920? A. Yes, sir.

Q. I will ask you, was there any affidavit or any other claim of interest filed in regard to any of the other property that was sold in this suit?

Mr. RITCHIE.—We object, on the ground that there is no foundation for it in the pleadings.

Objection overruled; plaintiff allowed an exception. [69—43]

Q. Was there any other claim of interest, in regard to this machinery, by the Alaska Homestake Mining Co. or anyone else prior to the sale on June

(Testimony J. H. D. Bouse.)

first—of the machinery? A. No, sir.

(Same objection.)

The COURT.—What is the purpose of this?

Mr. REED.—Our purpose is to show that the Alaska Homestake Mining Co. had knowledge of this whole proceeding from the time that these claims were filed up to the time judgment was rendered, up to the time the sale was made, and now after a long period of time, when the sale and all has been made, they come into a court of equity and ask that a judgment be set aside for the purpose of claiming and showing an interest in the property.

(Argument by Mr. Ritchie.)

The COURT.—I think it is a fair presumption that the Alaska Homestake Mining Co. had full knowledge of all these proceedings, the work done down there and all about it. I think that is as fair a presumption as the other one.

Mr. REED.—Mr. Bouse states that the Alaska Homestake Mining Co. prior to this did not make any claim to their interest or title in this property.

Mr. RITCHIE.—And we move to strike that much of the record because there is nothing contained in the pleadings that has any reference to it.

Motion denied and exception allowed.

Witness excused.

Mr. REED.—We rest. [70—44]

REBUTTAL.

Mr. RITCHIE.—I desire to be sworn.

Testimony of E. E. Ritchie, for Plaintiff (In Rebuttal).

E. E. RITCHIE, sworn as a witness for the plaintiff, in rebuttal, testified as follows:

About the first of May, I don't know exactly what date it was, it may have been late in April and may have been the first week in May, at the request of Mr. Topliff I drew up for him an affidavit provided for by the section of the statute, setting forth his claim to 12½% of this gold amalgam. That, of course, is included in the suit which we have brought here. Mr. Topliff's interest has been assigned back to the Alaska Homestake Co. for the purposes of this suit, in order to avoid a multiplicity of suits. Mr. Topliff is still the owner, the equitable owner, of that 12½% if the Alaska Homestake Co. recovers it, but for the purposes of the suit he assigned it back. I have the assignment in writing which I will bring over here and file—he assigned it back to the Alaska Homestake Co. in order that it might be included in the suit.

Mr. REED.—As far as you know, did the Alaska Homestake Mining Co. have any knowledge of the lien and the suit to foreclose the lien and the sale?

Mr. RITCHIE.—I couldn't answer that except in this way—that I was gone from Valdez from the 7th of December to the 23d of April and I had no knowledge of this suit, never heard of it in Seattle and knew nothing about it, until the day

(Testimony of E. E. Ritchie.)

or possibly two or three days after I arrived here, which was in the evening of the 23d of April, 1920. Mr. Hemple is a heavy stockholder and he didn't return here until the middle of May. I saw Mr. Hemple two or three times in Seattle in the month of April and discussed several topics of interest to us and probably [71—45] conditions in general, and if Mr. Hemple at that time had any knowledge of this suit, he didn't mention it to me, and the first time I talked to him about it was a few days after he returned, along about the middle or last of May, when he came over and talked to me about it.

Mr. REED.—You don't know whether any of the officers of the Alaska Homestake Mining Co. had any knowledge of these proceedings?

A. As I say, I never heard of the suit in Seattle. I saw Mr. Eckern there and Mr. Edmund Smith there—they are both stockholders. The Alaska Homestake Mining Co., as the record shows, was not made a party, and there was no publication in the newspapers, no notice. It would only be an opinion, but I don't believe any of those men in Seattle knew about it, because they didn't talk to me about it, although they were talking to me about other business up here. I am quite sure that Mr. Hemple's first knowledge of it was after he came up here the middle or last of May, because a few days after he arrived he came and talked to me about it, as though it was a new subject to him.

Mr. REED.—Didn't you state at one time in my presence that the Alaska Homestake Mining Co.

(Testimony of E. E. Ritchie.)

had decided not to plead in this case or take any action in relation to the machinery?

A. No, I didn't tell you that. I think what I told you was this—that they wanted to do it, but they were slow about putting up the costs and I told Mr. Hemple from the start that I would take the case on a contingent fee, but I certainly would not advance the costs. I didn't get Mr. Hemple and Mr. Topliff to advance the costs until September, which is the reason the suit was not brought sooner. [72—46]

Q. And you didn't know when they obtained knowledge of it?

A. I don't know; they might have known about it as long as I have; or they might have known about it last spring, but no one mentioned it to me in Seattle and I never heard of it until I got back here.

The COURT.—Were you the attorney for the Alaska Homestake Mining Company before?

A. Only in a general way. Mr. Lyons drew up the articles of incorporation and we got a block of stock for his services, and when they wanted anything done they used to write or wire me, after Judge Lyons left here. There was an understanding—I was not receiving any retainer—but there was an understanding that in anything affecting their interest, when I was here, I would look after it.

The COURT.—Did you know there were unsettled claims against the company?

A. I knew nothing about it; I took no interest in

(Testimony of E. E. Ritchie.)

it except this, that just before I left here, the 7th of December, I did hear talk that they were not doing very well down there, but that was all.

Mr. REED.—You drew up this notice of non-liability, you did that for them? A. I did that.

Mr. REED.—In June, 1919?

A. Yes, June, 1919.

Mr. REED.—Was there any stockholder or officer of the company here then?

A. As far as I know, there is no stockholder in Alaska, excepting Mr. Quitsch and myself, and Mr. Hemple when he is here. Mr. Hemple is here about half the year and away about half the year. [73—47]

**Testimony of William Quitsch, for Plaintiff.
(Recalled).**

WILLIAM QUITSCH, recalled.

Mr. RITCHIE,—Mr. Quitsch, do you know of any other stockholders here?

A. Charley Fisher and Kristop Lahz.

(Questions by the COURT.)

Q. It develops that you were president of this Free Gold Mining Co.—were you a stockholder in the Alaska Homestake Mining Co.? A. Yes.

Q. Were you any officer of that company?

A. I am now; I wasn't then.

Q. You know, of course, of these claims, that they were not paid, and you tried to negotiate a settlement—that is already in evidence.

Mr. RITCHIE.—At that time you were not an

(Testimony of William Quitsch.)

officer of the Alaska Homestake Mining Company—you were a stockholder? A. Just a stockholder.

Q. You were elected a director at a meeting held in November, 1920?

A. Yes, I didn't hold any office before that time.

Q. You say besides yourself and myself and Mr. Hemple, the only stockholders you knew were Charley Fisher and Kristop Lahz? A. Yes, sir.

Witness excused.

Testimony closed.

I do hereby certify that I am the Official Court Stenographer for the above-entitled court; that as such I reported the proceedings had in the above-entitled cause, to wit, Alaska Homestake Mining Company, a corporation, vs. R. A. W. Krampitz; that the above is a full, true and correct transcript of the evidence introduced and proceedings had at the trial of said cause.

I. HAMBURGER.

Valdez, Alaska, January 12, 1921. [74]

In the District Court for the Territory of Alaska,
Third Division.

No. 1029.

R. A. W. KRAMPITZ,

Plaintiff,

vs.

FREE GOLD MINING COMPANY, a Corpora-
tion,

Defendant.

Judgment and Decree.

This cause came on regularly for hearing before the Court without a jury on the 17th day of April, 1920. That plaintiff was represented by his attorney, J. L. Reed, Esq. The default of the defendant having been duly entered according to law. Thereupon the plaintiff introduce evidence, to wit, the oral testimony of R. A. W. Krampitz and J. L. Reed, and certain exhibits in support of the allegations of plaintiff's complaint. Thereupon the Court took said cause under advisement and rendered an oral opinion finding generally for the plaintiff and against the defendant, and directed that its decision and judgment be prepared and entered in accordance therewith. Thereafter and on the 17th day of April, 1920, the Court made and entered herein its findings of fact and conclusions of law, its said decision herein.

WHEREFORE, the findings and decision and premises considered, and the Court being fully advised in the premises, IT IS ORDERED, ADJUDGED AND DECREED as follows, to wit:

1. That by reason of the work and labor performed and done by plaintiff and his assignors upon, in and about said mills, machines and machinery and upon said dump or mass of mineral bearing earth, ore, rock and gold in the production thereof, hereinafter more particularly described, at the instance of the defendant, the owner and reputed owner thereof, the said plaintiff now has a first valid lien upon said mills, machines and machinery and upon said dump or mass of mineral bearing

earth, ore, rock and gold and against each and all the separate classes of property herein described for and in the sum of [75] nineteen hundred and 10/100 dollars, (\$1900.10), with interest thereon from the date hereof until paid at the rate of eight per centum per annum, together with plaintiff's costs and disbursements incurred in this action to be taxed by the clerk of this Court at \$383.30, and such costs and disbursements shall include the sum of \$50.70 for the preparing, filing and recording of plaintiff's said liens and the further sum of three hundred (\$300.00) dollars as plaintiff's attorneys' fees herein, and all other taxable costs and disbursements of plaintiff incurred herein.

2. That all and singular the premises, property and said mills, machines and machinery and said dump or mass of mineral bearing earth, ore, rock and gold hereinafter described, or so much thereof as may be sufficient to pay the amount due to plaintiff as shown in the last foregoing paragraph of this judgment, together with interest, costs and accruing costs, and which may be sold separately without material injury to the parties interested, shall be sold at public auction by the United States Marshal for the Third Judicial Division of the Territory of Alaska, according to law and the practice of this Court, and at such sale the plaintiff or any other person may become purchaser; that immediately upon such sale taking place the marshal shall execute and issue to the purchaser or purchasers the proper bill of sale or bills of sale for said property, and thereupon said purchaser or purchasers shall

be entitled to the sole and immediate and exclusive possession thereof.

3. That the said marshal out of the proceeds of said sale shall pay the amounts due under this judgment in the following order:

First: Retain his fees, disbursements and commissions of sale.

Second: Pay to plaintiff's attorney costs, disbursements and attorneys' fees or hereinbefore set forth.

Third: Pay to plaintiff or plaintiff's attorney the full amount due to plaintiff, to wit, the sum of \$1,900.10, or so much thereof as said proceeds of sale will pay of the same. [76]

4. That the said defendant and all persons claiming or to claim under it, and all persons having liens subsequent to plaintiff's liens upon said mills, machines and machinery and said dump or mass of mineral bearing earth, ore, rock and gold hereinafter described, and their and each of their heirs, assigns and personal representatives, and all persons claiming to have acquired any interest in said mine and property subsequent to the time plaintiff and his said assignors commenced to labor and render services whereby plaintiff liens were acquired, be forever barred and foreclosed of and from all equity and claim of, in and to said property and every part and parcel thereof after the delivery of said marshal's bill of sale.

5. That upon the delivery of the said marshal's bill of sale the purchaser or purchasers be given immediate title and possession of said prop-

erty hereinafter described, and that any of the parties to this action or any other person or persons, who may be in possession of said property or any part or parcel thereof, shall deliver possession thereof to the said purchaser or purchasers upon the production of the said marshal's bill of sale therefor.

6. That the property, mills, machines and machinery and said dump or mass of mineral-bearing earth, ore, rock and gold on which plaintiff has a lien as aforesaid, and which is to be directed to be sold by this judgment and decree, is situated, described and identified as follows:

One seven foot Lane Mill; one 25 h. p. Foss gas engine; steel rails, cars, pipes, forge, belting, pulleys, tools, hose, one ten by ten Ingersoll Air Compressor; one Receiver; one 25 h. p. Fairbanks Morse gas engine and equipment; one seven by eight inch Dodge Crusher; three stoppers; three jack hammers; one six h. p. Fairbanks hoist engine and cable; one two h. p. Fairbanks Morse engine; one Gibson Mill and equipment including concentrators and four amalgam plates.

situated upon the mining claims upon which said work and labor was performed near the north shore of Harriman Fjord, an inlet of Prince William Sound in Valdez Precinct, Territory of Alaska, known as and called;

CAMP BIRD No. 1, and

CAMP BIRD No. 2. [77]

About sixty-five ounces avoirdupois weight, of gold bullion extracted from the ore taken

from said mining claims subsequent to the commencement of the work and labor herein contracted for and which was brought to Valdez, Alaska, and placed in the First Bank of Valdez, Valdez, Alaska, said bullion being in form and shape circular and oval, retaining the form of the retort in which it was finally reduced; and all concentrates now on the above described mining ground;

and that the plaintiff's lien herein is hereby adjudged and decreed to extend, cover and include all and the total and full amount, extent and value of said gold bullion and concentrates wherever the same may now be located and also to said mill, machines and machinery.

7. That the said plaintiff may have judgment and execution against the said defendant for any deficiency which may remain after applying all the proceeds of the sale of said described property properly applicable to the satisfaction of said judgment.

Done at Valdez, Alaska, this 17th day of April, 1920.

FRED M. BROWN,
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 17, 1920. Arthur Lang, Clerk. By C. H. Wilcox, Deputy. Entered Court Journal No. 12, page No. 668.

It is stipulated that Plaintiff's Exhibit "A," being the record in Civil Action No. 1029, be omitted from the record on appeal except the foregoing

decree, and that all other exhibits be omitted from the record on appeal.

Dated January 15, 1921.

E. E. RITCHIE,
Attorney for Plaintiff.

J. L. REED,
Attorney for Defendant. [78]

COPY.

In the District Court for the Territory of Alaska,
Third Division.

No. 1060.

ALASKA HOMESTAKE MINING COMPANY,
a Corporation,

Plaintiff,

vs.

R. A. W. KRAMPITZ,

Defendant.

Findings of Fact and Conclusions of Law.

This cause came on regularly for trial on the 4th day of January, 1920, and E. E. Ritchie appearing as counsel for plaintiff, and J. L. Reed appearing as counsel for defendant, the case was tried by the Court, whereupon documentary evidence was introduced on behalf of plaintiff and the evidence of witnesses for plaintiff, to wit: Wm. Quitsch and A. J. Dimond; and the evidence of the witnesses for the defendant, to wit: R. A. W.

Krampitz, Wm. Holland and J. H. D. Bouse; and the evidence of E. E. Ritchie for plaintiff in rebuttal, and no further evidence being offered, and the arguments of counsel heard and the Court being fully advised in the premises now makes the following findings of fact and conclusions of law:

FINDINGS OF FACT.

I.

That on, prior and subsequent to the 19th day of March, 1920, said 19th day of March, 1920, being the time defendant herein filed and commenced an action for himself and certain other lien claimants to foreclose their liens against the personal property hereinafter described in these findings, plaintiff was a foreign corporation owning, leasing property and doing business within the Territory of Alaska; that at said times and prior to the 4th day of June, 1920, said plaintiff had wholly failed to comply with the provisions of Chapter 23 of the Compiled Laws of the Territory of Alaska, 1913, in the following particulars, that said plaintiff failed and neglected to file in the office of the Secretary of Alaska, and in the office of the clerk of the district court for the 3d division a duly authenticated copy of their charter or articles of incorporation and also a statement verified by the oath of the president and [79] secretary of said corporation and attested by the majority of the board of directors in accordance with the requirements of Section 654, and wholly failed and neglected during said times mentioned to file in said offices a certificate under the seal of the corporation, and the

signature of its president, vice-president, or other acting head, and its secretary certifying that the corporation has consented to be sued in the courts of the district upon all causes of action arising against it in the district, and that service of process may be made upon some person, a resident of the district, with the name and place of residence designated in such certificate and that such service when so made upon such agent, shall be valid service on the plaintiff corporation; and did wholly fail and neglect to appoint an agent residing at the principal place of business of said plaintiff or at all; that said plaintiff has wholly failed and neglected at said times to file in like manner the written consent of any person to act as such agent for plaintiff. That said plaintiff is a corporation duly organized under the laws of the State of Washington; that subsequent to the 4th day of June and before the commencement of this action plaintiff filed its articles of incorporation, appointment and consent of agent, and annual financial statement in the office of the secretary of the territory of Alaska and in the office of the clerk of the District Court, Third Division, at Valdez, and paid its annual license fee for the year 1920 to the territory.

II.

That plaintiff is now and has been continuously for several years last past the owner and subject to the rights of certain lessees hereinafter mentioned, entitled to the possession of two certain quartz mining claims situate adjacent to the north shore of Harriman fjord, Prince William Sound, Valdez

Precinct, Territory of Alaska, known as Camp Bird No. 1 and Camp Bird No. 2.

III.

That on or about May 1, 1918, plaintiff entered into a contract [80] in writing with J. E. Whalen and William Quitsch, whereby it leased to them said mining claims for a term of five years, ending October 25, 1922. At the time said lease was made said lessees were in possession thereof and continued in possession for a short time when they assigned, on the 3d day of June, 1918, the lease and all their rights thereunder to a corporation known as the Free Gold Mining Company and at said time said corporation entered into possession thereof. Said lease was filed for record in the office of the recorder of Valdez precinct May 31, 1918, and thereafter was duly recorded in Book 27, beginning at page 352.

IV.

That said lease provided that 12½ per cent of the gross output of gold and other metals taken by the lessees from the ground should be paid to the lessors upon receipt of returns of such metals from the United States assay office at Seattle, Washington.

V.

That said lease further provided that after July 1st, 1918, the lessees should keep at least six men steadily at work upon said mining claims, unless prevented by acts of God, labor strikes or other things over which they had no control, and that a cessation of work upon the mine for a period of

thirty days should work a forfeiture of the lease and in such case the property should immediately revert to the lessors. It was further stipulated in said lease that the lessees should at all times keep the premises free and clear of liens for labor or material furnished to the lessees.

VI.

That it was stipulated in said lease that all improvements, machinery, tools and other equipment placed on the property by the lessees during the term of the lease should remain upon the premises and become the property of the lessors at the expiration of the lease either by running of the term or by forfeiture as stipulated in its provisions.
[81]

VII.

That on the 25th day of June, 1919, while said Free Gold Mining Company was in possession of said mine and equipment as assignees of said lessees named in said lease and engaged in developing and operating said mine, plaintiff caused to be posted in three conspicuous places on the ground a notice in writing in words and figures following, to wit:

“NOTICE FOR NONLIABILITY FOR LABOR.

“Notice is hereby given that the Alaska Homestake Mining Company is the owner of the mining claims known as the Camp Bird No. 1 and Camp Bird No. 2, near Harriman Fjord, Valdez Precinct, Territory of Alaska; that said claims were leased to J. E. Whalen and William Quitsch by lease which appears of record in the office of the Com-

missioner and recorder of said Valdez precinct in Book 27 at pages 257-8-9-260, and supplemental lease to said lessees which appears of record in said recorder's office at pages 355-6-7-8-9-360 of Book 27; that said lease was assigned by said lessees to the Free Gold Mining Company, a corporation, by assignment which appears of record in said recorder's office on Book 27 at pages 364-5-6. Notice is further given that all work being done on said mining claims or to aid in their development or operation is done under and by virtue of said lease by the lessees or their assigns, and said Alaska Homestake Mining Company will not be responsible for any wages of employees engaged in any kind of work upon said claims or in aid of mining operations thereon.

“Dated and posted June —, 1919.

“ALASKA HOMESTAKE MINING CO.

“By E. E. RITCHIE.”

VIII.

That about January 8, 1920, said lessees and their assignee, Free Gold Mining Company, failed for more than thirty days thereafter to keep at least six men at work upon the mine, or any men at all, and failed to keep the said premises free and clear of labor liens. That said failure to keep men at work was not due to any act of God, labor strike, or other unavoidable circumstance, but was wholly the fault of the lessees and their assignee.

IX.

That on or about the 10th day of January, 1920, defendant and five other persons filed in the office

of the recorder of Valdez precinct, claims of lien upon certain machinery, tools and other equipment on said premises, and upon certain gold amalgam taken from [82] said mine, all more fully described hereinafter. All of said claims of lien were for wages of labor expressly stated to have been performed subsequent to the posting of the notice by plaintiff on June 25, 1919, set forth in the seventh finding of fact.

X.

That on the 19th day of March, 1920, defendant for himself and as assignee of the five other claimants, filed suit in this court to foreclose said liens upon the property described in them, and in his complaint made only the Free Gold Mining Company defendant. That this plaintiff was not made a party to the suit. Thereafter such proceedings were had in said action that judgment was rendered therein on the 17th day of April, 1920, against said Free Gold Mining Company and in favor of the plaintiff, defendant herein, for \$1,900.10 and \$383.-30 costs, and foreclosure of said liens, and directing sale of the property. Thereafter, acting under an order of sale issued out of the clerk's office of this court, the United States marshal of the Third Division of Alaska sold on May 1st, 1920, to defendant herein the following described personal property:

66oz. 6pwt. of GOLD RETORT:

and did sell on the 1st day of June, 1920, to defendant herein the following described personal property, to wit:

One seven foot Lane Mill; one 25 h. p. Foos engine; steel rails, cars, pipes, forge, beltings, pulleys, tools, hose, one ten by ten Ingersoll Air Compressor; one Receiver; one 25 h. p. Fairbanks Morse gas engine and equipment; one seven by eight inch Didge Crusher; three stopers; three jack hammers; one six h. p. Fairbanks hoist engine and cable; one two h. p. Fairbanks Morse engine; one Gibson Mill and equipment, including concentrators and three amalgam plates.

XI.

That no part or portion of the property sold to defendant described in the tenth finding herein was or is at the times mentioned on the surface of the ground and affixed thereto, so as to become fixtures and included within the terms "mine" or "mining claim" [83] as defined in Chapter 13 of the Session Laws of Alaska, 1915, or so as to become a part of the mining claims known as Camp Bird No. 1 and Camp Bird No. 2; that all of the same excepting said gold retort are within the definition and term "mill" or "machine" as defined in said session laws placed at the mine or on said mining claims and used in connection with the operation thereof the same not being fixtures and included in the term "mine." That said gold retort is within the third class of property defined in said session laws defined as dump or mass of mineral bearing sands, earth, ore, rock, etc.

XII.

That all of said property sold to defendant at

said *marshal's and* described in the tenth finding herein was and is at all the times mentioned and at the times when said labor was employed personal property. That all of said machinery and equipment was placed upon said mining claims by and belonged to and the ownership thereof was in the Free Gold Mining Company, save and except, one two-h. p. Fairbanks Morse engine; and one Gibson Mill and equipment; and that upon none of said property described in the tenth finding was notice posted or any claim of ownership made or given by the plaintiff herein in direct terms or otherwise than as could be inferred from said lease.

CONCLUSION OF LAW.

That by reason of the foregoing finding of facts that defendant's liens, equities, rights, and title under said judgment, decree and sales to each and all items of personal property as described in the tenth finding herein are superior and prior to any right or claim of plaintiff herein, and that defendant is entitled to have said action dismissed and to recover his costs herein.

Done in open court this 7th day of January, 1920.

FRED M. BROWN,
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Jan. 7, 1921. Arthur Lang, Clerk. By Aaron E. Rucker, Deputy.

Entered Court Journal No. 13, page 79. [84]

In the District Court for the Territory of Alaska,
Third Division.

No. 1060.

ALASKA HOMESTAKE MINING COMPANY,
a Corporation,

Plaintiff,

vs.

R. A. W. KRAMPITZ,

Defendant.

Judgment.

This cause came on for hearing on the 4th day of January, 1921, and was heard upon the complaint, answer, reply, exhibits and proof in the cause and arguments of counsel and the cause was submitted to the Court for consideration and decision and after deliberation thereon and the Court having rendered its decision therein, makes and files its findings of fact and conclusions of law in writing:

It is ORDERED, ADJUDGED AND DECREED that plaintiff's action herein be and the same is hereby dismissed; that defendant have judgment against plaintiff for his costs and disbursements herein, taxed at \$24.90, for which execution will issue.

Dated at Valdez, Alaska, this 7 day of January, 1921.

FRED M. BROWN,
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Jan. 7, 1921. Arthur Lang, Clerk. By Aaron E. Rucker, Deputy. Entered Court Journal No. 13, page No. 82. [85]

In the District Court for the Territory of Alaska,
Third Division.

No. 1060.

ALASKA HOMESTAKE MINING COMPANY,
a Corporation,

Plaintiff,

vs.

R. A. W. KRAMPITZ,

Defendant.

**Plaintiff's Exceptions to Findings of Fact by the
Court.**

Now comes the plaintiff and excepts to the findings of fact made and entered by the Court herein as follows:

1.

Plaintiff excepts to the finding set forth as part of the first finding of fact, in the sixth and seventh lines thereof, that plaintiff was "doing business within the Territory of Alaska," on the ground that no testimony was offered to show that plaintiff was transacting any business in the Territory of Alaska other than exercising ordinary rights of ownership of two mining claims admitted to be owned by plaintiff.

2.

Plaintiff excepts to the finding contained in the 10th finding of fact that the following machinery and equipment are personal property, to wit:

1, 7 ft. Lane Mill; one 25 h. p. Foos engine; steel rails, cars, pipes, beltings, pulleys, one ten by ten Ingersoll Air Compressor; one Receiver; one 25 h. p. Fairbanks Morse gas engine and equipment; one seven by eight inch Dodge Crusher; one 6 h. p. Fairbanks hoist engine and cable; one Gibson Mill and equipment, including concentrators and three amalgam plates.

on the ground that said finding is contrary to the evidence.

3.

Plaintiff excepts to the finding contained in the 11th finding [86] of fact that none of the property described in the second exception was annexed to the ground for the reason that said finding is contrary to the evidence.

4.

Plaintiff excepts to all of said 11th finding of fact which in referring to the property described in the 10th finding of fact makes the following recital:

“That all of the same excepting said gold retort are within the definition and term ‘mill’ or ‘machine’ as defined in said session laws placed at the mine or on said mining claims and used in connection with the operation thereof the same not being fixtures and included in the term ‘mine.’ That said gold retort is

within the third class of property defined in said session laws defined as dump or mass of mineral bearing sands, earth, ore, rock, etc.”

on the ground that the said recitals are not findings of fact but conclusions of law, and are too indefinite to have legal effect, either as findings of fact or conclusions of law.

5.

Plaintiff excepts to the finding in the 12th finding of fact that all of the property described in said tenth finding of fact “was and is at all the times mentioned and at the times when said labor was employed personal property,” on the ground that the same is contrary to the evidence.

Plaintiff excepts to the finding in said 12th finding of fact: “That all of said machinery and equipment was placed upon said mining claims by and belonged to and the ownership thereof was in the Free Gold Mining Company, save and except one two h. p. Fairbanks Morse engine, and one Gibson Mill and Equipment,” upon the ground that said finding is misleading because it fails to recognize the reversionary right of plaintiff to all the property placed upon the ground by the Free Gold Mining Company, and further because said finding is irrelevant to the issues in the case.

Plaintiff excepts further to the finding contained in said [87] 12th finding of fact that “upon none of said property described in the tenth finding was notice posted or any claim of ownership made or given by the plaintiff herein, in direct terms or otherwise than as could be inferred from said

lease." For the reason that the undisputed evidence shows that notices were posted in three conspicuous places on the ground, one of them at the entrance to the mill building containing most of the machinery and equipment described.

E. E. RITCHIE,

Attorney for Plaintiff.

Service of copy admitted, this 11th day of January, 1921.

J. L. REED,

Atty. for Deft.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Jan. 11th, 1921. Arthur Lang, Clerk. By Aaron E. Rucker, Deputy. [88]

In the District Court for the Territory of Alaska,
Third Division.

No. 1060.

ALASKA HOMESTAKE MINING COMPANY,
a Corporation,

Plaintiff,

vs.

R. A. W. KRAMPITZ,

Defendant.

Petition for Appeal.

The above-named plaintiff, conceiving itself aggrieved by the order and judgment made and entered on the 7th day of January, 1921, in the above-entitled cause, does hereby appeal from said or-

der and judgment to the United States Circuit Court of Appeals for the Ninth Circuit, for the reason specified in the assignment of error, which is filed herewith, and he prays that this appeal may be allowed, and that a transcript of the records, proceedings and papers upon which said order was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco.

Dated January 11, 1921.

E. E. RITCHIE,
Attorney for Plaintiff.

The foregoing claim of appeal is allowed, January 11, 1921.

FRED M. BROWN,
Judge of District Court.

Entered Court Journal No. 13, page No. 89. [89]

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Jan. 15, 1921. Arthur Lang, Clerk. By Aaron E. Rucker, Deputy.

In the District Court for the Territory of Alaska,
Third Division.

No. 1060.

ALASKA HOMESTAKE MINING COMPANY,
a Corporation,

Plaintiff and Appellant,

vs.

R. A. W. KRAMPITZ,

Defendant and Respondent.

Assignment of Errors on Appeal.

Now comes the plaintiff, Alaska Homestake Mining Company, and says that in the record and proceedings of the court in the above-entitled cause, and in the final order and judgment therein made and entered on January 7, 1921, there is manifest error, and for error said plaintiff assigns the following:

1.

The Court erred in denying plaintiff's motion to strike the affirmative defense set up in defendant's answer.

2.

The Court erred in overruling plaintiff's objection to the following:

Mr. REED.—This was along in the fall of 1919, when Bill Quitsch was operating down there. I will ask you also in this connection, weren't there several papers drawn up in which efforts were made to get the men who went down there to work, to forego any claim of lien upon the property?

Mr. RITCHIE.—We object to that as irrelevant.

Objection overruled; plaintiff allowed an exception.

3.

The Court erred in overruling plaintiff's objection to the following question, the witness Quitsch being on the stand:

Q. And at one time did you present to him a waiver of lien on this property down there,

in case he went to work for the Free Gold Mining Company?

Mr. RITCHIE.—We object to that as irrelevant.

Objection overruled; plaintiff allowed an exception. [90]

4.

The Court erred in overruling plaintiff's objection to the following question, the witness Quitsch being on the stand:

Q. (By Mr. REED.) I will ask you this question—shortly prior to January 8th, in the compressor building, in your presence and in the presence of Nick Meckem and William Holland, did you hear Holland ask whether, in view of the notices that were posted their claims would be collectible, and you said, to these two men, well, the machinery is good for the labor, isn't it?

Mr. RITCHIE.—We object to that as irrelevant for the reason that no statement made by Mr. Quitsch could be binding on the Homestake Mining Company. It would be a matter of legal opinion, anyhow. He was manager of the Free Gold Mining Co., not of the Alaska Homestake.

The COURT.—I will overrule the objection, *pro forma*, and it will be considered in connection with the legal phase of the whole matter.

Plaintiff allowed an exception to the ruling.

* * * * *

Mr. RITCHIE.—We object to any conversa-

tion between these men, between Mr. Quitsch and these claimants, as to their rights.

By the COURT.—He may ask if he told them that, and it will be considered the same as the other question.

Plaintiff allowed an exception to the ruling.

5.

The Court erred in overruling plaintiff's objection to the following question:

Q. (By Mr. REED.) And is it not a fact that up to March 19th, which is the date that this suit was filed to foreclose those liens—did you not at a great many times between January 8th and March 19th, try to induce these men not to commence this suit, hoping to get the financial affairs of the Free Gold Mining Company straightened out?

Mr. RITCHIE.—We object to that as irrelevant and incompetent, first, because Mr. Quitsch was not representing the plaintiff in this case, the Alaska Homestake Mining Company. In the second place there was an automatic forfeiture on the 31st day after the Free Gold Company ceased work; and finally there is no lien given by the sweeping Alaska lien law on personal property except particular machinery such as dredges and mills.

Objection overruled, *pro forma*, and exception allowed.

6.

The Court erred in refusing to strike from the record certain questions propounded by the Court

to the witness Dimond and Mr. [91] Dimond's answers thereto, said questions being in part as follows:

Q. Do you know about the employment of these men whose liens are involved here—do you know of their original employment?

A. No; Mr. Quitsch was manager; he employed them.

Q. This paper that you drew up here, while it is not in the record—that was made on the part of the company, to get men to accept employment at that time and to take their pay on bedrock—take their pay out of the cleanups?

* * * * *

Q. Are any of these claimants in this case stockholders?

* * * * *

Mr. RITCHIE.—In order to keep the issues clear, I move to strike the questions propounded by the Court to Mr. Dimond and Mr. Dimond's answers thereto.

Motion denied; plaintiff allowed an exception.

7.

The Court erred in overruling plaintiff's objection to the following question propounded by Mr. Reed to the defendant Krampitz:

Q. Just describe the building in which it was placed—how about the side walls. Were they thick walls or just one boarded wall?

Mr. RITCHIE.—We object to that as the buildings are not in issue.

8.

The Court erred in overruling plaintiff's objection to the following propounded by Mr. Reed to the defendant Krampitz:

Q. Now, in regard to the conversation which occurred prior to January 8th in the concentrator-room, at which Mr. Quitsch was present and Nick Meckem was present—state what that conversation was?

Mr. RITCHIE.—We object to the conversation as incompetent and irrelevant and not binding on the Homestake Mining Company.

Q. And what Mr. Quitsch said about it?

The objection was overruled and plaintiff allowed an exception.

9.

The Court erred in overruling plaintiff's objection to the following question:

Q. (By Mr. REED to Defendant KRAM-PITZ.) Now, after your liens were [92] filed on January 10th did Mr. Quitsch have any conversation with you and the other lien claimants in regard to not bringing an action to foreclose your lien?

Mr. RITCHIE.—We object, as irrelevant and incompetent.

Objection overruled; plaintiff excepts.

10.

The Court erred in denying plaintiff's motion to strike the testimony of defendant Krampitz as follows:

Mr. RITCHIE.—I desire to move to strike all of the witness' testimony as to conversations with Mr. Quitsch about his wages.

Motion denied; plaintiff allowed an exception.

11.

The Court erred in denying plaintiff's motion to strike from the record the following questions by the Court and answers thereto, propounded to the witness, defendant Krampitz:

Q. You have talked to these men who assigned these claims to you, at the time they went to work and during the time they worked, about their claim? A. Yes, sir.

Q. And you say they went on the theory that the machinery was good for their wages?

A. That is what we thought, it ought to be, but I wasn't sure. Somebody made a remark about that notice posted up there and Mr. Quitsch said then, the machinery ought to be good for it, because that don't apply to this notice.

Q. You never went to look at the lease itself?

A. No.

Mr. RITCHIE.—At this time we move to strike from the record and the consideration of the Court the discussion just held by the Court with the witness as to his understanding and conversations.

Motion denied; plaintiff allowed an exception.

12.

The Court erred in overruling plaintiff's objec-

tion to the following questions propounded to the witness William Holland:

Q. (By Mr. REED.) I will ask you, before you went down there, was anything said to you at the time by Mr. Quitsch as to waiving your lien rights, was any paper presented to you?

A. Yes, sir.

Q. And did you sign it? A. No, sir.

Mr. RITCHIE.—All these questions go in under my objection. [93]

Objection overruled and exception allowed.

13.

The Court erred in overruling plaintiff's objections to questions propounded to the witness Holland as to conversations with Mr. Quitsch, as follows:

Q. (By Mr. REED.) Now you had conversations with Mr. Quitsch after he came to Valdez.

A. Yes, sir. * * *

Q. State if you recall what he said about filing suits.

Mr. RITCHIE.—We object to any conversations between the witness and Mr. Quitsch after he quit work.

Objection overruled; plaintiff excepts.

14.

The Court erred in overruling plaintiff's objection to the following questions propounded to the witness Hollard by Mr. Reed.

Q. He (Quitsch) came to Valdez and then returned and after he returned what did he tell

you, what did he tell the boys in regard to their work?

Objected to as irrelevant.

Objection overruled; plaintiff excepts.

15.

The Court erred in overruling plaintiff's objection to the question propounded to the witness Bouse, deputy United States marshal, referring to a claim filed with the marshal upon the 12½% interest in the gold product from the mine, as follows:

Q. (By Mr. REED.) I will ask you, was there any affidavit or any other claim of interest filed in regard to any of the other property that was sold in this suit.

Mr. RITCHIE.—We object, on the ground that there is no foundation for it in the pleadings.

Objection overruled; plaintiff allowed an exception.

Q. Was there any other claim of interest, in regard to this machinery, by the Alaska Homestake Mining Company or anyone else prior to the sale on June first of the machinery?

A. No, sir.

Same objection. * * *

Mr. REED.—Mr. Bouse states that the Alaska Homestake Mining Company prior to this did not make any claim to their interest or title in this property.

Mr. RITCHIE.—And we move to strike that much of the record because there is nothing

contained in the pleadings that has any reference to it.

Motion denied and exception allowed. [94]

16.

The Court erred in making the finding of fact set forth in plaintiff's first exception to the findings, as follows:

Plaintiff excepts to the finding set forth as part of the first finding of fact, in the sixth and seventh lines thereof, that plaintiff was "doing business within the Territory of Alaska on the ground that no testimony was offered to show that plaintiff was transacting any business in the Territory of Alaska other than exercising ordinary rights of ownership of two mining claims admitted to be owned by plaintiff."

17.

The Court erred in making the finding of fact set forth in plaintiff's second exception to the findings, as follows:

Plaintiff excepts to the finding contained in the tenth finding of fact that the following machinery and equipment are personal property, to wit:

1, 7 ft. Lane Mill; 1-25 h. p. Foos engine; steel rails, cars, pipes, beltings, pulleys, one ten by ten Ingersoll Air Compressor; one Receiver; one 25 h. p. Fairbanks Morse gas engine and equipment; one 7 by 8 inch Dodge Crusher; one 6 h. p. Fairbanks hoist engine and cable; one Gibson Mill and equipment including concentrators and three amalgam plates;

on the ground that the said finding is contrary to the evidence.

18.

The Court erred in making the finding of fact set forth in plaintiff's third exception to the findings, as follows:

Plaintiff excepts to the finding contained in the 11th finding of fact that none of the property described in the second exception was annexed to the ground, for the reason that said finding is contrary to the evidence.

19.

The Court erred in making the finding of fact set forth in plaintiff's fourth exception to the findings, as follows:

Plaintiff excepts to all of said 11th finding of fact which in referring to the property described in the 10th finding of fact makes the following recital:

“That all of the same excepting said gold retort are within the definition and term ‘mill’ or ‘machine’ as defined in said session laws placed at the mine or on said mining claims and used in connection with the operation thereof, the same not being fixtures and included in the term ‘mine.’ That said gold retort is within the third [95] class of property defined in said session laws defined as dump or mass of mineral bearing sands, earth, ore rock, etc.”

On the ground that the said recitals are not findings of fact but conclusions of law, and are too indefinite to have legal effect, either as findings of fact or conclusions of law.

20.

The Court erred in making the finding of fact set forth in plaintiff's fifth exception to the findings, as follows:

Plaintiff excepts to the finding in the 12th finding of fact that all of the property described in said tenth finding of fact "was and is at all the times mentioned and at the times when said labor was employed personal property" on the ground that the same is contrary to the evidence.

Plaintiff excepts to the finding in said 12th finding of fact, "That all of said machinery and equipment was placed upon said mining claims by and belonged to and the ownership thereof was in the Free Gold Mining Company, save and except, 1 #2 h. p. Fairbanks Morse engine, and one Gibson Mill and Equipment," upon the ground that said finding is misleading because it fails to recognize the reversionary right of plaintiff to all the property placed upon the ground by the Free Gold Mining Company, and further because said finding is irrelevant to the issues in the case.

Plaintiff excepts further to the finding contained in said 12th finding of fact that "upon none of said property described in the tenth finding was notice posted or any claim of ownership made or given by the plaintiff herein, in direct terms or otherwise than as could be inferred from said lease." For the reason that the undisputed evidence shows that notices

were posted in three conspicuous places on the ground, one of them at the entrance to the mill building containing most of the machinery and equipment described."

21.

The Court erred in making its conclusion of law upon the findings of fact, as follows:

That by reason of the foregoing findings of facts that defendant's liens, equities, rights, and title under said judgment, decree and sales to each and all items of personal property as described in the tenth finding herein are superior and prior to any right or claim of plaintiff herein, and that defendant is entitled to have said action dismissed and to recover his costs herein.

22.

The Court erred in entering judgment against the plaintiff and in favor of the defendant. [96]

WHEREFORE plaintiff as appellant prays that said judgment be reversed.

E. E. RITCHIE,

Attorney for Plaintiff and Appellant.

Service by delivery of copy admitted this 15th day of January, 1921.

J. L. REED,

Attorney for Plaintiff and Appellant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Jan. 15, 1921. Arthur Lang, Clerk. By Aaron E. Rucker, Deputy. [97]

In the District Court for the Territory of Alaska,
Third Division.

No. 1060.

ALASKA HOMESTAKE MINING COMPANY,
a Corporation,

Plaintiff,

vs.

R. A. W. KRAMPITZ,

Defendant.

Order Granting Injunction Pendente Lite.

Now, on this 13th day of January, 1921, this cause came on to be heard upon the motion of E. E. Ritchie, attorney for the plaintiff for an order granting plaintiff an injunction, enjoining and restraining defendant from proceeding to execution upon his judgment recovered in civil action No. 1029 in this court, during the pendency of plaintiff's appeal from the order and judgment of this court, made and entered in this cause on January 7, 1921, refusing plaintiff's application for an injunction herein and dismissing said cause upon the merits.

Plaintiff appeared by its attorney, E. E. Ritchie, and defendant by his attorney, J. L. Reed.

It appearing that plaintiff is entitled to such interlocutory injunction *pendente lite*, IT IS ORDERED, that the same be granted, upon the execution by plaintiff of a bond in the sum of One Thousand Dollars, with sufficient sureties, conditioned upon the payment of all damages that may result to

defendant by reason of the issuance of the injunction, in the event that judgment shall finally be affirmed.

It is further ORDERED that the bond for costs on appeal to be given by plaintiff be fixed at Two Hundred and Fifty Dollars.

Dated January 13, 1921.

FRED M. BROWN,
Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Jan. 13, 1921. Arthur Lang, Clerk. By C. H. Wilcox, Deputy.

Entered Court Journal No. 13, page No. 88.

[98]

Filed in the District Court, Territory of Alaska, Third Division. Jan. 14, 1921. Arthur Lang, Clerk. By Aaron E. Rucker, Deputy.

In the District Court for the Territory of Alaska,
Third Division.

No. 1060.

ALASKA HOMESTAKE MINING COMPANY,
a Corporation,

Pltff. and Appellant,

vs.

R. A. W. KRAMPITZ,

Deft. and Respondent.

Bond on Injunction Pendente Lite.

KNOW ALL MEN BY THESE PRESENTS, That we, Alaska Homestake Mining Company, as principal, and A. M. Dieringer and W. N. Cuddy, both of Valdez, Alaska, as sureties, are held and firmly bound unto the above named R. A. W. Krampitz, in the sum of One Thousand Dollars, to be paid to the said R. A. W. Krampitz, his heirs, executors, administrators or assigns; to which payment well and truly to be made we bind ourselves, our successors, heirs, executors, administrators and assigns, jointly and severally, by these presents.

Dated this 13th day of January, 1921.

WHEREAS, The above-named plaintiff and appellant has sued out an appeal to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, to reverse a judgment rendered against it in the above-entitled action, in the District Court for the Territory of Alaska, Third Division, which judgment was so rendered and entered by said Court on the 7th day of January, 1921:

Now, therefore, if the above-named Alaska Homestake Mining Company shall prosecute said appeal to effect and shall answer all costs and damages if it should fail to make its plea good, then this obligation to be void; otherwise to remain in full force and effect.

In Witness Whereof, the said Alaska Homestake Mining Company has caused this undertaking to be signed by its attorney of record [99] and the

sureties named herein have hereunto set their hands this 13th day of January, 1921.

ALASKA HOMESTAKE MINING COMPANY,

By E. E. RITCHIE,

Its Attorney.

A. M. DIERINGER,

W. N. CUDDY.

United States of America,
Territory of Alaska,—ss.

A. M. Dieringer and W. N. Cuddy, being duly sworn, each for himself, says: That he is one of the sureties who signed the foregoing bond; that he is not an attorney or counselor at law, marshal, clerk of any court or other officer of any court, and that he is worth the sum of One Thousand Dollars, named as the penal sum in said bond, over and above his just debts and liabilities and exclusive of property exempt by law from execution.

A. M. DIERINGER.

W. N. CUDDY.

Subscribed and sworn to before me, this 13th day of January, 1921.

[Seal]

I. HAMBURGER,

Notary Public for Alaska.

Commission expires Oct. 31, 1921.

The foregoing bond was acknowledged before me and by me approved this 13th day of January, 1921.

FRED M. BROWN,

District Judge. [100]

Filed in the District Court, Territory of Alaska,
Third Division. Jan. 14, 1921. Arthur Lang,
Clerk. By Aaron E. Rucker, Deputy.

In the District Court for the Territory of Alaska,
Third Division.

No. 1060.

ALASKA HOMESTAKE MINING COMPANY,
a Corporation,

Pltff. and Appellant,

vs.

R. A. W. KRAMPITZ,

Deflt. and Respondent.

Cost Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS,
That we, Alaska Homestake Mining Company, as
principal, and A. M. Dieringer and W. N. Cuddy,
both of Valdez, Alaska, as sureties, are held and
firmly bound unto the above-named R. A. W. Kram-
pitz in the sum of Two Hundred and Fifty Dollars,
to be paid to the said R. A. W. Krampitz, his heirs,
executors, administrators or assigns, to which pay-
ment well and truly to be made we bind ourselves,
our successors, heirs, executors, administrators and
assigns, jointly and severally, by these presents.

Dated this 13th day of January, 1921.

WHEREAS, The above-named plaintiff and
appellant has sued out an appeal to the United
States Circuit Court of Appeals for the Ninth Judi-
cial Circuit, to reverse a judgment rendered against

it in the above-entitled action, in the District Court for the Territory of Alaska, Third Division, which judgment was so rendered and entered by said Court on the 7th day of January, 1921, dismissing plaintiff's action and for costs against it:

Now, therefore, the condition of the above obligation is such that if the above-named Alaska Homestake Mining Company shall prosecute said appeal to effect and shall answer all costs, if it should fail to make its plea good, then this obligation to be void; otherwise to remain in full force and effect.

In Witness Whereof, the said Alaska Homestake Mining Company [101] has caused this undertaking to be signed by its attorney of record and the sureties named herein have hereunto set their hands this 13th day of January, 1921.

ALASKA HOMESTAKE MINING COMPANY,

By E. E. RITCHIE,

Its Attorney.

A. M. DIERINGER,

W. N. CUDDY.

United States of America,
Territory of Alaska,—ss.

A. M. Dieringer and W. N. Cuddy, being duly sworn, each for himself, says: That he is one of the sureties who signed the foregoing bond; that he is not an attorney or counselor at law, marshal, clerk of any court or other officer of any court, and that he is worth the sum of Two Hundred and Fifty Dollars, named as the penal sum in said bond, over

and above his just debts and liabilities and exclusive of property exempt by law from execution.

A. M. DIERINGER.

W. N. CUDDY.

Subscribed and sworn to before me this 13th day of January, 1921.

[Seal]

I. HAMBURGER,

Notary Public in and for Alaska.

Commission expires Oct. 31, 1921.

The foregoing bond was acknowledged before me and by me approved this 13th day of January, 1921.

FRED M. BROWN,

District Judge. [102]

In the District Court for the Territory of Alaska,
Third Division.

No. 1060.

ALASKA HOMESTAKE MINING COMPANY,
a Corporation,

Pltff. and Appellant,

vs.

R. A. W. KRAMPITZ,

Def't. and Respondent.

**Order Settling and Certifying Bill of Exceptions on
Appeal.**

It appearing that the foregoing bill of exceptions on appeal is approved by counsel for the parties respectively, and that the same conforms to the truth and is in proper form:

IT IS ORDERED that said bill of exceptions is hereby approved, allowed and settled, and ordered to be filed and made part of the record in this cause.

Done in open court this 15th day of January, 1921.

FRED M. BROWN,

Judge of the District Court of Alaska, Third Division.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Jan. 15, 1921. Arthur Lang, Clerk. By Aaron E. Rucker, Deputy.

Entered Court Journal No. 13, page No. 89. [103]

Filed in the District Court, Territory of Alaska, Third Division. Jan. 15, 1921. Arthur Lang, Clerk. By C. H. Wilcox, Deputy.

In the District Court for the Territory of Alaska, Third Division.

No. 1060.

ALASKA HOMESTAKE MINING COMPANY,
a Corporation,

Plaintiff and Appellant,

vs.

R. A. W. KRAMPITZ,

Defendant and Respondent.

Citation on Appeal.

United States of America,—ss.

To R. A. W. Krampitz, GREETING:

WHEREAS, The Alaska Homestake Mining Com-

pany has appealed to the Circuit Court of Appeals of the Ninth Circuit from a judgment recently rendered in the District Court of Alaska, Third Division, in favor of you, the said R. A. W. Krampitz, and has filed the security required by law: You are therefore cited to appear before the said Circuit Court of Appeals of the Ninth Circuit, in the City of San Francisco, State of California, on the 14th day of February, 1921, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at Valdez, in said Third Division of Alaska, this 15th day of January, 1921.

FRED M. BROWN,

Judge of the District Court of the Territory of Alaska, Third Division.

Service of the foregoing Citation by receiving a true copy thereof is accepted this 13th day of January, 1921.

J. L. REED,

Attorney for Deft. and Respondent. [104]

In the District Court for the Territory of Alaska,
Third Division.

No. 1060.

ALASKA HOMESTAKE MINING COMPANY,
.. Plaintiff,

vs.

R. A. W. KRAMPITZ.

**Certificate of Clerk U. S. District Court to Transcript
of Record.**

United States of America,
Territory of Alaska,
Third Division,—ss.

I, Arthur Lang, Clerk of the District Court for the Territory of Alaska, Third Division, do hereby certify that the annexed and foregoing 104 pages, numbered from 1 to 104, inclusive, are a true, full and correct transcript of the records and files of the proceedings in the above-entitled cause, as the same appears on the records and files in my office; that the same is made in accordance with a praecipe filed in above cause by E. E. Ritchie, attorney for the plaintiff in said cause.

I further certify that the foregoing transcript has been prepared, examined and certified to by me and the cost thereof, amounting to \$26.40, was paid to me by E. E. Ritchie, attorney for plaintiff and plaintiff in error.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of this court at Valdez, Alaska, this 15th day of January, 1921.

[Seal]

ARTHUR LANG,

Clerk of the District Court for the Territory of
Alaska, Third Division.

By C. H. Wilcox,
Deputy. [105]

[Endorsed]: No. 3641. United States Circuit Court of Appeals for the Ninth Circuit. Alaska Homestake Mining Company, a Corporation, Appellant, vs. R. A. W. Krampitz, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Territory of Alaska, Third Division.

Filed February 1, 1921.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.